

**Appeal of Commitment Adjustment Letters for Funding Year 2015 (FY15) dated March 19, 2018 and April 23, 2018 (collectively, CAL)**

**Applicant:** WHITE OAK INDEPENDENT SCHOOL DISTRICT 1, Vinita, OK (WHIO)

FCC Form 471 Application Number: 999698

Billed Entity Number (BEN): 140126

**Appellant:** Northeast Rural Services, Inc., d/b/a RECtec Technology & Communications (NRS)

Internet Service Provider

498 ID (SPIN): 143016556

**LETTER OF APPEAL**

**May 18, 2018**

Universal Service Administrative Co.

Schools and Libraries Division

[Appeals@sl.universalservice.org](mailto:Appeals@sl.universalservice.org)

RE: *Appeal of USAC's CAL for FY15 – WHIO 2015-C1-999698*

*Funding Request Number -2722400*

*NRS's, Internet Access Provider, Authorized Contact for USAC Appeal:*

Ricky Hignite, NRS, d/b/a BOLT, IT Director

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To Whom It May Concern,

NRS, through its undersigned legal counsel, hereby submits this letter and attached documentation for its appeal of USAC's decision stated in WHIO's two (2) identical CALs of March 19 and April 23, 2018, for FY15 (USAC Decision), to wit:

*After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. USAC will seek recovery of \$52,812.00 in improperly disbursed funds from the applicant. Funds were erroneously committed for FRN 2722400, which was not justified as cost effective. This funding request is denied as a result of a Cost Effectiveness Review, which has determined that your request for a 10mb high speed circuit at a monthly cost of \$4,980.00 is more than 5 times the average 10mb circuit cost in OK and for a school with only 49 students is excessive and not cost effective as required by FCC Rules. FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals. Additionally, the applicant's technology plans for requested services should be based on an*

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*assessment of their reasonable needs. Applicants that request services that are beyond their reasonable needs and thus not cost effective have violated the above rules.*

The complete CAL for FY15 dated March 19, 2018 is attached hereto as **Exhibit A-1**. The complete CAL for FY15 dated April 23, 2018 is attached hereto as **Exhibit A-2**. Per the CAL, USAC denied \$52,812 (90% x 58,680.00) in E-Rate funding to WHIO, a remote school located in rural northeast Oklahoma.

In summary, NRS respectfully requests the following relief:

*USAC grant NRS's appeal of WHIO's CAL for FY15 and, in reconsideration, amend WHIO's CAL for FY15 to reflect a total approved E-Rate funding amount of \$53,264.09, which includes the full 90% of NRS-provided Category 1-Internet Access charges equal to \$52,812. USAC further find the requested 10 mb high speed circuit costs to be in compliance with, and furtherance of, the FCC's directives in its Second E-Rate Modernization Order (SEMO),<sup>1</sup>e.g., encouraging "efficient investment in high-speed broadband infrastructure, including the deployment of fiber . . . ."<sup>2</sup>*

## **I. BACKGROUND**

### **General**

For the sake of brevity, NRS refers USAC to WHIO's December 11, 2017 Response to USAC's *Notice to Deny FY17 Funding Request* (Applicant Response), attached hereto as **Exhibit B**, for details regarding WHIO's rural location, demographics, and multi-year Internet access service contract with NRS. Further, NRS refers to the testimony of WHIO's Superintendent and NRS's Staff in Applicant's Response as evidence supporting NRS's relief requested herein - *the 10 mb high speed circuit costs are in line with the FCC's E-Rate goals and funding requirements.*

While NRS references Applicant's Response (**Ex. B**), NRS does not adopt any express or implied assertions of WHIO contained therein regarding the relevance of the Oklahoma Corporation Commission's (OCC) Fund Determination, including its "competitive bidding analysis" purportedly performed in Oklahoma Universal Service Fund (OUSF) proceeding

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<sup>1</sup> *In the Matter of Modernizing the E-Rate Program for Sch. & Libraries Connect Am. Fund (SEMO)*, 29 F.C.C Rcd. 15538 (2014).

<sup>2</sup> *SEMO*, at para. 17.

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bearing Cause No. PUD (Public Utility Division) 201500431. The PUD/OUSF Administrator processes OUSF funding applications based on vastly different standards and criteria than those required by the FCC under the E-Rate program.

For example, PUD's Regulatory Manager testified in OUSF Cause No. 201600248 that the OUSF Administrator uses internal review guidelines when processing funding applications. These guidelines call for a bid evaluation process which does not capture the primary goals of the FCC's *SEMO*. Specifically, PUD does not consider the type of technology employed in provisioning internet access and uses a "technology neutral approach" during its bid evaluation.<sup>3</sup> Further, "Oklahoma legislators understood that limiting bids based upon technology has the potential to limit service provider's ability to bid their services and likewise establishes too many opportunities for 'bid structuring.' The OUSF Administrator has not, and will not, limit the bid evaluation process based upon a school's attempt to dictate technology."<sup>4</sup> Further, PUD disregards and deems irrelevant whether the school's prior experience with a bidding provider was positive. Rather, PUD will only consider a school's negative experience with a bidding provider when performing its OUSF bid evaluation process.<sup>5</sup>

As explained in further detail below, the FCC's *SEMO* expressly mandates that E-Rate funding be used to incentivize construction of high-speed broadband infrastructure to remove any barriers to infrastructure investment and to ensure all schools achieve the FCC's connectivity targets.<sup>6</sup> The E-Rate funds denied in WHIO's CAL for FY15 consist predominantly of the precise category one non-recurring construction costs that the FCC authorized as proper and eligible under the E-Rate program.<sup>7</sup>

*Northeast Rural Services (NRS)*

NRS is an experienced internet access service provider and possesses an OCC Certificate of Convenience and Necessity authorizing NRS to provide competitive local exchange telecommunications and data services in the state of Oklahoma.<sup>8</sup> NRS has been providing universal services (both category 1 and 2 services) to schools in rural Oklahoma for over 15 years. In 2013, NRS became one of the first internet service providers to invest significant funds

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<sup>3</sup> See Responsive Testimony of James L. Jones, at p. 6, l. 22 – p. 7, l. 3, and p. 10, ll., 1-6, filed in OCC Cause No. PUD 201600248, attached hereto as **Exhibit C**.

<sup>4</sup> *Id.* at p. 10, ll., 6-19.

<sup>5</sup> See James L. Jones Summary of Testimony, p. 3, filed in filed in OCC Cause No. PUD 201600248, attached hereto as **Exhibit D**.

<sup>6</sup> *SEMO*, at para. 17.

<sup>7</sup> See generally, *SEMO*.

<sup>8</sup> OCC Cause No. PUD 201200015; Cause No. PUD 201500014.

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in building a fiber-only (fiber to the home (FTTH)) network facilitating provision of 1 Gigabit service to critically underserved subscribers in remote, rural Oklahoma. In order to finance the FTTH project, NRS became a borrower under RUS's Broadband Loan and Loan Access Guarantee Program. In 2014, NRS was selected as a Rural Broadband Experiment (RBE) winning bidder for certain Oklahoma Project Bids (at the highest service level) by the FCC's Wireline Competition Bureau. The RBE's mission is to explore cost-effective ways of expanding broadband service in rural areas of the country, which includes required construction of high-speed fiber broadband infrastructure for the purpose of installing a robust and scalable broadband system. The RBE provides support to NRS over a ten (10) year period for the purpose of constructing facilities capable of providing broadband in conformity with the FCC's minimum service standards. In satisfaction of RBE conditions, NRS applied for and successfully obtained an Eligible Telecommunications Carrier (ETC) designation from the OCC in certain AT&T Oklahoma exchanges.<sup>9</sup> NRS's significant investments in fiber infrastructure and its devotion to providing rural schools the same broadband connectivity that is available to urban schools epitomize the FCC's mission as further defined in the *SEMO*.

**WHIO Request for Proposal & the Bids**

In 2013, WHIO issued a request for proposal (RFP) related to FCC Form 470 (Application No. 735190001142013) requesting bids for new internet access services at speeds of 10 Mbps (upgrade from 9 Mbps provided via facilities not consisting of direct wireline fiber), including installation and construction to connect WHIO's demarcation point on-site. WHIO's RFP is attached hereto as **Exhibit E**. WHIO specifically requested that bidders provide the service via fiber facilities. The RFP indicated WHIO's need to upgrade Internet access to meet educational needs. WHIO received bids from AT&T Oklahoma, Burlington Point, OneNet, and NRS, attached hereto as **Exhibit F**, which are summarized as follows:

- **AT&T Oklahoma** - \$25,619.40 per year/\$2,134.95 per month for 9 Mbps presumably delivered under existing bonded T-1 Lines.
- **Burlington Point** - \$16,464.00 per year/\$1,372.00 per month (1 yr contract), \$14,280 per year/\$1,190.00 per month (2 yr contract), \$12,876.00 per year/\$1,073.00 per month (3 yr contract) for 10 Mbps. Delivery type was not specified in bid, which represented a blanket bid for all Oklahoma schools.

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<sup>9</sup> See OCC Cause No. PUD 201400358.



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- **OneNet** - \$18,300.00 per year/\$1,525.00 per month for 20 Mbps, and \$18,000.00 per year/\$1,500.00 per month for 15 Mbps. Delivery type was unknown, and upon information and belief, OneNet's lack of facilities in northeast Oklahoma would have required service to be provided over AT&T's existing bonded T-1 Lines.
- **NRS** - \$60,480.00 per year/\$5,040.00 per month (5 yr contract) for *10 Mbps dedicated fiber internet circuit (provisioned using newly installed fiber facilities) and internet maintenance with transport*. NRS's was the only bid to offer a multi-year contract longer than three (3) years. NRS's bid totaled \$302,400.00 over the five-year term. Construction costs for installation of two point to point fiber lines made up \$233,400.00 of the \$302,400.00 bid amount. Documentation providing specific details relative to the construction costs is attached hereto as **Exhibit G**. The \$5,040.00 monthly cost consisted of two price factors (1) Dedicated Internet Access (10 Mbps x \$100.00/Mb = \$1,000.00) and Internet Maintenance Services (\$150.00) totaling \$1,150.00 per month; and (2) Construction Costs for two fiber strands totaling \$3,890.00 per month. For the years 2015-2017, the initial proposal and costs were reduced to a yearly cost of \$58,680.00 per year or \$4,890.00 per month. The adjustment was the result of Internet Maintenance Services no longer being eligible for funding. As a result, the per month cost for FY15 includes the DIA cost referenced above and construction costs for two fiber strands totaling \$3,890.00 per month. *Beginning in the 2018 Funding Year, WHIO's renewal of services would result in the provision of 10 Mbps internet access services at \$650.00 per month (comprised of \$15.00 per megabit and \$500.00 for transportation), or \$7,800.00 per year. See NRS's Facilities Order and Service Agreement with WHIO executed February 22, 2018, attached hereto as **Exhibit H**.*

Per the E-Rate Bid Evaluation Grid referenced and provided in Applicant's Response (**Ex. B**), WHIO considered provider bids using five (5) factors, *i.e.*, Price-Erate, Prior Experience, Personnel Qualifications, Proximity, and Quality of Service. WHIO associated 30 points for Price-Erate (the highest weighted factor), 25 points for Prior Experience, 20 points for Personnel Qualifications, 10 points for Proximity, and 10 points for Quality of Service.

WHIO evaluated bids per the foregoing scale and awarded NRS the highest score despite NRS receiving the lowest score among bidders for Price-Erate. NRS scored higher in all other categories resulting in NRS achieving the highest overall score. In choosing NRS, WHIO's decision can be summarized as follows:

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- NRS satisfactorily provided universal services to WHIO since 2003 (*e.g.*, Category 1 services); NRS's headquarters is located in close proximity to WHIO; NRS personnel were often on-site at the school and personnel had an intimate understanding of WHIO's network; NRS submitted the only complete bid in response to WHIO's RFP, *e.g.*, NRS's bid addressed WHIO's requested point to point fiber services and charges for installation and construction to connect fiber at WHIO's demarcation point; NRS's bid offered a multi-year contract which spread the non-recurring, construction costs over multiple years, and ultimately, resulted in the most cost-effective service offering with 10 Mbps internet access charges falling to **\$650.00** per month in FY18 – *a price that is more than 50% less than the monthly charge (\$1,500.00) offered by the lowest priced bidder, OneNet, for less reliable and far more inferior internet access services*; NRS was the only provider that offered fiber technology in or near the rural school; and NRS's service offering was invaluable to the enhancement of educational opportunities available to WHIO students (*e.g.*, all students were able to move to one-to-one devices).
- The other bidders failed to specifically address the delivery type for the services. Generally, WHIO understood AT&T and OneNet services to rely on the use of T-1 lines. WHIO's had negative prior experience with T-1 lines and such facilities were far less cost effective than NRS's services delivered over fiber. Moreover, AT&T's bid was for less than WHIO's requested Mbps, and thus, would not have met WHIO's educational needs. OneNet's bid was for 15 Mbps, 5 Mbps more than was requested. Burlington Point did not hold an OCC-issued CCN and was not responsive to WHIO's queries.

NRS refers USAC to testimony of WHIO and NRS personnel in Applicant's Response (**Ex. B**) for further details regarding WHIO's bid evaluation and selection process.

*FCC's E-Rate Program Policies & Clarifications*

Under 47 U.S.C.A § 254(b)(2), (3), and (6):

Access to advanced telecommunications and information services should be provided in all regions of the Nation . . . Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to . . . information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. . . .

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Elementary and secondary schools and classrooms . . . should have access to advanced telecommunications services.

Under 47 C.F.R. § 54.511(a), “in selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering.” Further, schools may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor.”

Per the FCC’s findings in its *SEMO*:

Building on the *E-rate Modernization Order* we adopted in July, the improvements to the program that we adopt in this Order seek to close the high-speed connectivity gap between rural schools and libraries and their urban and suburban counterparts, and provide sufficient and certain funding for high-speed connectivity to and within all eligible schools and libraries. *SEMO*, at para. 1.

Since its inception 18 years ago, the E-rate program has helped connect almost every school and library in the country to the Internet, bringing tremendous benefits to teachers, students, and library patrons. In the *E-rate Modernization Order*, we recognized the growing need for high-speed connectivity to and within schools and libraries. Today, high-speed broadband is transforming learning by providing teachers and students with a vast array of tools to improve educational outcomes, collaboration, and access to information. Investments from the E-rate program help schools take full advantage of feature-rich educational technologies that allow for individualized digital learning, access to interactive content, and online assessments. The same investments allow libraries to offer a free and safe place to search for information on job opportunities, find public services, access online education, and connect with friends and family. And by helping to connect every student and every library patron to high-speed broadband, no matter where they live or their income level, E-rate provides a vital link to the digital world and new opportunities. *SEMO*, at para. 2.

Commission staff has estimated that only 65 percent of schools have access to high-speed broadband that can be scaled up to meet our connectivity targets, and that rural schools have even less access than urban schools. Only a fraction of rural schools with access to high-speed connectivity are connecting at speeds that meet our targets because of the high cost of connectivity, while other schools are

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unable to find a provider willing to provide high-speed broadband services. The connectivity gap that libraries face is even wider, with half of all public libraries reporting connections of less than 10 Mbps. Connections within the building are also a concern, as demonstrated by the recent Consortium for School Networking survey of school district leaders showing that 45 percent do not believe their Wi-Fi networks have the capacity to move to one-to-one student-to-device deployment. *SEMO*, at para. 4.

The CoSN Survey shows that 91 percent of respondents identified at least one infrastructure upgrade that is essential for them to implement in order to meet our connectivity targets. *SEMO*, at para. 5.

We therefore take actions targeted at closing the rural connectivity gap and increasing affordable high-speed broadband connections to schools and libraries. *SEMO*, at para. 12.

To encourage efficient investment in high-speed broadband infrastructure, including the deployment of fiber, we direct USAC to suspend for four years its policy of requiring applicants to amortize large category one non-recurring charges. Encouraging construction of high-speed connections to schools and libraries is a crucial part of our effort to ensure that all schools and libraries achieve our connectivity targets. Suspending the amortization requirement will give applicants the flexibility to plan large construction projects knowing they can recover the E-rate supported portion of any non-recurring costs upfront, thus providing greater certainty regarding funding and removing this potential barrier to infrastructure investment. *SEMO*, at para. 17.

Large upfront payments have not proven to be a drain on the Fund, and would not have been even if they had not been amortized. Moreover, we agree with commenters that argue that suspension of this amortization policy is likely to incentivize efficient investments in infrastructure, including the deployment of fiber. *SEMO*, at para. 19.

In this Order, as discussed in more detail below, we are raising the annual E-rate cap, in part to ensure there are sufficient category one funds available to meet the build-out costs of connecting currently underserved schools and libraries. *SEMO*, at para. 20.

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We recognize that allowing applicants greater flexibility to pay the non-discounted cost of special construction charges combined with the other changes we make in this Order could increase demand for category one support. However, a temporary increase in the demand to the Fund for special construction charges will ultimately be beneficial to E-rate applicants and the stability of the Fund. It will result in more students and library patrons enjoying access to scalable, high-speed broadband connections and we expect increasing flexibility for applicant's non-recurring payments for special construction will allow applicants to structure the agreements with service providers so as to lower future costs for recurring services. *SEMO*, at para. 25.

In FCC Chairman's, Tom Wheeler's, *SEMO* Statement, Chairman Wheeler summarized *SEMO* objectives:

Previously I indicated that two-thirds of schools and libraries do not subscribe to sufficient high-speed connectivity. In addition, nearly one-third of all schools and three-fourths of all libraries couldn't get a high-speed connection if they wanted because the infrastructure simply isn't there. . . . Whereas the Commission's program to help defray the costs to rural health care facilities allows funds to be spent to build or lease high-speed capacity where it isn't commercially available or where there is no affordable option, the E-rate program to connect our schools and libraries has specifically prohibited this. Today's action will give rural schools and libraries an alternative beyond being held hostage by the actions or inactions of a local telecommunications provider. This gap is worst in rural America. Rural schools have even less access to high-speed connectivity than most urban and suburban schools. Forty-one percent of America's rural schools couldn't get a high-speed fiber connection if they tried.

Although, Commissioner Ajit Pai wrote a dissenting statement in *SEMO*, he emphatically stated:

Despite today's *Order*, and despite July's sad, partisan retreat, I still believe that E-Rate is a program worth fighting for. When I spoke to villagers in America's northernmost library, in Barrow, Alaska, I saw how broadband can connect a community that no road reaches. When I visited Los Angeles in the spring, and Chicago in the fall at Mayor Rahm Emanuel's invitation, I saw the progress that poor children can make when technology is integrated in the classroom. In South Dakota and Kansas, I've seen the potential of next-generation technologies to empower small communities and give rural Americans the opportunities found in

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our nation's largest cities. . . . But in time, I do believe we will achieve real E-Rate reform. And I hope I'm prescient about that, too, because every one of our communities, urban and rural, rich and poor, deserve it.

As set forth below, WHIO's selection of NRS's bid achieved the primary objectives of the E-Rate program as proffered in *SEMO* and further interpreted by FCC Commissioners Wheeler and Pai, because it resulted in significant investment in broadband fiber infrastructure for the purpose of closing the connectivity gap in rural Oklahoma while evidencing the most cost-effective service offering of any provider submitting bids for WHIO Category 1 services.

## **II. GROUNDS FOR APPEAL & SUPPORTING AUTHORITIES**

### **WHIO's Selection of NRS's Bid Evidences the Most Cost-Effective Service Offering**

Under 47 C.F.R. § 54.511(a), "in selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering." The offering submitted by NRS was the most cost-effective service offering of those submitted due to the long-term benefits realized beginning Funding Year 2018.

First, in evaluating submitted bids, White Oak evaluated price as the primary factor, but also considered a number of other relevant factors as permitted by E-Rate rules. *See* 47 C.F.R. § 54.511(a). The FCC applied 47 C.F.R. § 51.511(a) in a similar case assessing a school districts choice of a higher cost provider bid based upon other relevant factors. *See In the Matter of Requests for Review &/or Waiver of Decisions of the Universal Serv. Adm'r by Sweetwater City Sch. et al.*, 31 F.C.C. Rcd. 13555 (2016). In its bid evaluation, Sweetwater City Schools received two bids, one from Education Networks of America (ENA) for a total of \$9.3 million and from AT&T for a total \$6.0 million, ultimately selecting ENA. *Id* at 13557. Sweetwater conducted a bid evaluation based on a 100-point total, of which 25 points were associated with the price of eligible services. *Id*. In their evaluation, AT&T was awarded the full 25 points where as ENA was awarded only 16.2 points. *Id*. However, other non-price categories such as business plan score, experience, qualifications, capacity, and ability to meet scheduling requirements, ENA received higher values than AT&T resulting in ENA receiving 90.2 out of 100 points versus AT&T receiving 75.5 points. *Id* at 13557, 13562. Ultimately, the FCC determined Sweetwater City School's bid evaluation was in compliance with the Commission's competitive bidding rules based on the fact that "Sweetwater Consortium gave price more weight than any other single factor as the Commission's rules require." *Id* at 13562.

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WHIO's bid evaluation process satisfies the compliant bid evaluation process explained in *Sweetwater City Schl.* While NRS was not the highest scoring bid under the Price-Erate category, NRS significantly outscored AT&T, Burlington Point, and OneNet in the non-price criteria despite the primary factor considered being price. *See Applicant's Response, Ex. B*, at p. 3. Specifically, as set forth in detail above, NRS was the only complete bid in response to WHIO's RFP, *e.g.*, NRS's bid addressed WHIO's requested point to point fiber services and charges for installation and construction to connect fiber at WHIO's demarcation point; and NRS's bid offered a multi-year contract which spread the non-recurring construction costs over multiple years.

Second, WHIO's selection of NRS's bid accomplished the overarching goals of the E-Rate program. In essence, E-Rate goals, as clarified and refined in *SEMO*, can be summarized as follows:

- (i) closing the high-speed connectivity gap between rural schools and their urban counterparts;
- (ii) ensuring rural schools have robust and scalable broadband networks, which allow students to move to one-to-one devices, and thus, increase educational opportunities;
- (iii) encouraging construction of high-speed connections to schools and libraries as the same is a crucial part of the FCC's effort to ensure that all schools and libraries achieve connectivity targets;
- (iv) encouraging efficient investment in high-speed broadband infrastructure, which specifically *includes the deployment of fiber*;
- (iv) suspending the build-out cost amortization requirement to give applicants the flexibility to plan large construction projects knowing they can recover the E-rate supported portion of any non-recurring costs upfront, thus providing greater certainty regarding funding and removing this potential barrier to infrastructure investment;
- (iv) raising the annual E-Rate cap to ensure sufficient Category 1 funds available to meet build-out costs, especially considering that large upfront payments have not proven to be a drain on the Fund; and
- (v) achieving the overall result - more students and library patrons enjoying access to scalable, high-speed broadband connections, with the expectation that increasing

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flexibility for applicant's non-recurring construction payments will allow applicants to structure the agreements with service providers *so as to lower future costs for recurring services*.

WHIO's decision to select NRS as the winning bidder achieved all of the foregoing E-Rate goals. As evidenced in the testimony of WHIO's Superintendent, NRS's fiber deployment allowed students to move to one-to-one devices, take virtual field trips, take foreign language classes, and have access to digital library books and textbooks. *See Applicant's Response, Ex. B*, at p. 5. Moreover, providing WHIO access to full E-Rate funding encourages efficient investment in high-speed *fiber* broadband infrastructure and allowed WHIO and NRS to plan fiber build-out with the understanding that WHIO could cover the construction costs over the first four years of the subject multi-year contract. This point is furthered by the fact that no other bidder offered the requested internet access service through the construction of point to point fiber. NRS directs USAC to construction cost documents (*see Ex. F*) in order to show fiber construction was bid with specificity with construction costs for two fiber strands totaling \$3,890 of the overall monthly bid amount of \$4,890.

Most importantly, selecting NRS's bid had the direct result of lowering future costs for recurring services in accordance with the FCC's primary goal pronounced in *SEMO*. Specifically, NRS's bid offered a multi-year contract which spread the non-recurring construction costs over multiple years, and ultimately, resulted in the most cost-effective service offering with 10 Mbps internet access charges falling to **\$650.00** per month in FY18 – *a price that is more than 50% less than the monthly charge (\$1,500.00) offered by the lowest priced bidder, OneNet, for less reliable and far more inferior internet access services. See Ex. H*. Further, comparing the annual cost of \$7,800 for NRS's service beginning in FY18 to OneNet's annual cost of \$18,000 for far less robust and scalable internet access service shows an annual savings of \$10,200.

NRS respectfully requests USAC reconsider its FY15 defunding decision because the reason supporting USAC's denial – *[t]his request is for a 10mb high speed circuit at a monthly cost of \$4,980.00 which is more than 5 times the average 10mb circuit costs in OK and for a school with only 49 students is excessive and not cost effective* – is not accurate. In direct furtherance of the FCC's E-Rate goal of granting greater flexibility relative to school's construction cost payments in order to increase access to scalable, high-speed broadband connections while lowering future costs for recurring services, WHIO's selection of NRS's bid resulted in a monthly charge of \$650.00 for internet access services provided over robust and



**Appeal of Commitment Adjustment Letters for Funding Year 2015 (FY15) dated March 19, 2018 and April 23, 2018 (collectively, CAL)**

**Applicant:** WHITE OAK INDEPENDENT SCHOOL DISTRICT 1, Vinita, OK (WHIO)

FCC Form 471 Application Number: 999698

Billed Entity Number (BEN): 140126

**Appellant:** Northeast Rural Services, Inc., d/b/a RECtec Technology & Communications (NRS)

Internet Service Provider

498 ID (SPIN): 143016556

scalable point to point fiber facilities – **a monthly charge nearly \$350.00 less than the average monthly cost for a 10 mb high speed circuit.**<sup>10</sup>

### **III. CONCLUSION**

As an eligible recipient under 47 C.F.R § 54.501, WHIO complied with the competitive bidding requirements set forth in 47 C.F.R §54.504 and selected NRS’s bid as representing the “most cost-effective service offering” in compliance with 47 C.F.R § 54.511. NRS’s bid was the only one that directly responded to WHIO’s request for internet access service provided over point to point fiber. NRS’s monthly charge of \$4,890.00 included the amortized cost for construction and installation of new fiber facilities, which the FCC emphatically permits and encourages under *SEMO*. Additionally, the initial costs would allow WHIO to receive 10 Mbps internet access services at the extremely reasonable, below-average cost of \$650.00 per month (\$7,800.00 per year) beginning in FY 2018.

Undoubtedly, granting the relief requested in this appeal, will further Commissioner Wheeler’s express goal of giving “rural schools and libraries an alternative beyond being held hostage by the actions or inactions of a local telecommunications provider,” and provide high-speed broadband options that remain non-existent in rural America. Further, granting this appeal would be in line with Chairman Pai’s belief that the “E-Rate is a program worth fighting for,” and further his desire to achieve E-Rate reform because, after all, every rural student deserves it.

WHEREFORE, NRS respectfully request USAC grant its appeal of WHIO’s CAL for FY15 and, in reconsideration, amend WHIO’s CAL for FY15 to reflect an approved E-Rate funding amount of \$53,264.09, which includes the full 90% of NRS-provided Category 1- Internet Access charges equal to \$52,812; and further find the requested 10 mb high speed circuit costs are in compliance with the FCC’s *SEMO* directives, *e.g.*, encouraging “efficient investment in high-speed broadband infrastructure, including the deployment of fiber.”

---

<sup>10</sup> NRS bases its position on USAC’s finding that \$4,980/month is 5 times the average 10 mb circuit cost in Oklahoma (*i.e.*, \$4,980 / 5 = \$996/month for 10 mb circuit).

**Appeal of Commitment Adjustment Letters for Funding Year 2015 (FY15) dated March 19, 2018 and April 23, 2018 (collectively, CAL)**

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FCC Form 471 Application Number: 999698

Billed Entity Number (BEN): 140126

**Appellant:** Northeast Rural Services, Inc., d/b/a RECtec Technology & Communications (NRS)

Internet Service Provider

498 ID (SPIN): 143016556

Dated this 18<sup>th</sup> day of May, 2018.

Respectfully submitted,

LOGAN & LOWRY, LLP

101 South Wilson Street

P. O. Box 558

Vinita, OK 74301

(918) 256-7511

(918) 256-3187 (*fax*)

[mtorrone@loganlowry.com](mailto:mtorrone@loganlowry.com)

Attorneys for Appellant,

Northeast Rural Services, Inc.

By: /s/Michael T. Torrone

Michael T. Torrone, OBA #21848



Universal Service  
Administrative Co.

## Commitment Adjustment Letter

Richard McSpadden  
WHITE OAK INDEP SCHOOL DIST 1  
PO Box 130  
Allen, OK 74825

3/19/2018

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

**Total commitment adjustment: \$52,812.00**

**Total amount to be recovered: \$52,812.00**

<i>FCC Form 471</i>	<i>FRN</i>	<i>Commitment adjustment</i>	<i>Total amount to be recovered</i>	<i>Explanation(s)</i>	<i>Party to recover from</i>
999698	2722400	\$52,812.00	\$52,812.00	Cost Effectiveness	Applicant

*See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.*

### Commitment Adjustment

FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

1 of 4

**EXHIBIT**  
**"A-1"**



## Universal Service Administrative Co.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

### FCC's Red Light Rule

The FCC Red Light Rule requires USAC to dismiss pending FCC Form 471 applications, appeals, and invoices or to net disbursements offsetting the debt if the entity responsible for paying the outstanding debt owed to the FCC has not paid the debt or made satisfactory arrangements to pay the debt within 30 days of the Demand Payment Letter. For information on the Red Light Rule, see

<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>

### To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.

All appeals filed with USAC must be filed in EPC by selecting "Appeal" from the menu in the top right hand corner of your landing page and providing the requested information.

Your appeal should include the following information. (Because you file the appeal through your EPC account, the system will automatically fill in some of these components for you).

- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Commitment Adjustment Letter) and the decision you are appealing:
  - a. Appellant name;
  - b. Applicant name and service provider name, if different from appellant;
  - c. Applicant BEN and Service Provider Identification Number (SPIN);
  - d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
  - e. "Commitment Adjustment Letter," AND the exact text of the decision that you are appealing.



**Universal Service  
Administrative Co.**

3) Identify the problem and the reason for the appeal and explain precisely the relief sought. Please keep your appeal to the point, and provide supporting documentation. Be sure to keep a copy of your entire appeal, including any correspondence and documentation. A copy will automatically be saved for you in EPC. USAC will reply to your appeal submission to confirm receipt.

For more information on submitting an appeal to USAC including step by step instructions on how to file the appeal through EPC, please see "Appeals" in the Schools and Libraries section of the USAC website.

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The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 11:59 PM ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193.

For more information about submitting waiver requests or appeals to the FCC, including options to submit the waiver request or appeal via U.S. mail or hand delivery, visit the FCC's website.

Schools and Libraries Division

cc: Sheila Allgood  
Northeast Rural Services, Inc.



**Universal Service  
Administrative Co.**

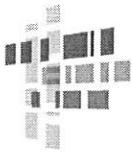
## Adjustment Report

FCC Form 471 Application Number: 999698  
Funding Request Number: 2722400  
Commitment Adjustment: \$52,812.00  
Total Amount to Be Recovered: \$52,812.00  
Explanation(s): Cost Effectiveness

Party to Recover From: Applicant  
Funding Year: 2015  
Billed Entity Number: 140126  
Services Ordered: INTERNET ACCESS  
Service Provider Name: Northeast Rural Services, Inc.  
SPIN: 143016556  
Original Funding Commitment: \$52,812.00  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date: \$52,812.00

### Funding Commitment Adjustment Explanation

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. USAC will seek recovery of \$52,812.00 in improperly disbursed funds from the applicant. Funds were erroneously committed for FRN 2722400, which was not justified as cost effective. This funding request is denied as a result of a Cost Effectiveness Review, which has determined that your request for a 10mb high speed circuit at a monthly cost of \$4,980.00 is more than 5 times the average 10mb circuit cost in OK and for a school with only 49 students is excessive and not cost effective as required by FCC Rules. FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals. Additionally, the applicants technology plans for requested services should be based on an assessment of their reasonable needs. Applicants that request services that are beyond their reasonable needs and thus not cost effective have violated the above rules.



Universal Service  
Administrative Co.

## Commitment Adjustment Letter

Richard McSpadden  
WHITE OAK INDEP SCHOOL DIST 1  
27455 S. 4340 Rd.  
Vinita, OK 74301

4/23/2018

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

**Total commitment adjustment: \$52,812.00**

**Total amount to be recovered: \$52,812.00**

<i>FCC Form 471</i>	<i>FRN</i>	<i>Commitment adjustment</i>	<i>Total amount to be recovered</i>	<i>Explanation(s)</i>	<i>Party to recover from</i>
999698	2722400	\$52,812.00	\$52,812.00	Cost Effectiveness	Applicant

*See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.*

### Commitment Adjustment

FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

1 of 4

**EXHIBIT  
"A-2"**



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<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>

### To Appeal This Decision

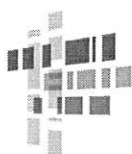
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- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Commitment Adjustment Letter) and the decision you are appealing:
  - a. Appellant name;
  - b. Applicant name and service provider name, if different from appellant;
  - c. Applicant BEN and Service Provider Identification Number (SPIN);
  - d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
  - e. "Commitment Adjustment Letter," AND the exact text or the decision that you are appealing.





Universal Service  
Administrative Co.

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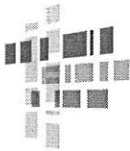
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Schools and Libraries Division

cc: Sheila Allgood  
Northeast Rural Services, Inc.



Universal Service  
Administrative Co.

## Adjustment Report

FCC Form 471 Application Number: 999698  
Funding Request Number: 2722400  
Commitment Adjustment: \$52,812.00  
Total Amount to Be Recovered: \$52,812.00  
Explanation(s): Cost Effectiveness

Party to Recover From: Applicant  
Funding Year: 2015  
Billed Entity Number: 140126  
Services Ordered: INTERNET ACCESS  
Service Provider Name: Northeast Rural Services, Inc.  
SPIN: 143016556  
Original Funding Commitment: \$52,812.00  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date: \$52,812.00

### Funding Commitment Adjustment Explanation

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. USAC will seek recovery of \$52,812.00 in improperly disbursed funds from the applicant. Funds were erroneously committed for FRN 2722400, which was not justified as cost effective. This funding request is denied as a result of a Cost Effectiveness Review, which has determined that your request for a 10mb high speed circuit at a monthly cost of \$4,980.00 is more than 5 times the average 10mb circuit cost in OK and for a school with only 49 students is excessive and not cost effective as required by FCC Rules. FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals. Additionally, the applicants technology plans for requested services should be based on an assessment of their reasonable needs. Applicants that request services that are beyond their reasonable needs and thus not cost effective have violated the above rules.

Sheila Allgood  
Northeast Rural Services, Inc.  
212 S. Main,  
Grove, OK 74344

**N R S**  
**RECEIVED**  
**MAY 02 2018**

**White Oak Indep School Dist 1  
Vinita, Oklahoma  
WHIO 2017 – C1 – 171010784**

Internet Access provided by Northeast Rural Services – FRN 1799020240

12/11/2017

*Notice to Deny:*

We have completed our review of your Funding Year 2017 FCC Form 471 application 171010784 and determined that FRN 1799020240 will be denied because your request has not been justified as cost effective as required by FCC rules. FRN 1799020240 is denied for the following reasons: This request is for a 10mb high speed circuit at a monthly cost of \$4980 which is more than 5 times the average 10mb circuit cost in OK and for a school with only 49 students is excessive and not cost effective.

FRN 1799020240 is part of a multi-year contract established in FY2014 with a Contract Award Date of 1/10/2014, Service Start Date of 7/1/2015 and a Contract Expiration Date of 6/30/2019. Committed FY 2015 FCC Form 471# 999698 FRN 2722400 and FY2016 FCC Form 471# 161012721 FRN 1699021396 rely on the same contract and the commitment amount for the FRNs will be rescinded in full. Any future funding year FRNs which rely on the same contract will also be subject to the same denial.

If you disagree with our determination and you have alternative information, please provide the supporting documentation. If you fail to respond to this email within 7 days, we will perform the action(s) listed above.

**Applicant Response:**

Thank you for the opportunity to respond with further details regarding the services provided by Northeast Rural Services (NRS doing business as RecTec.)

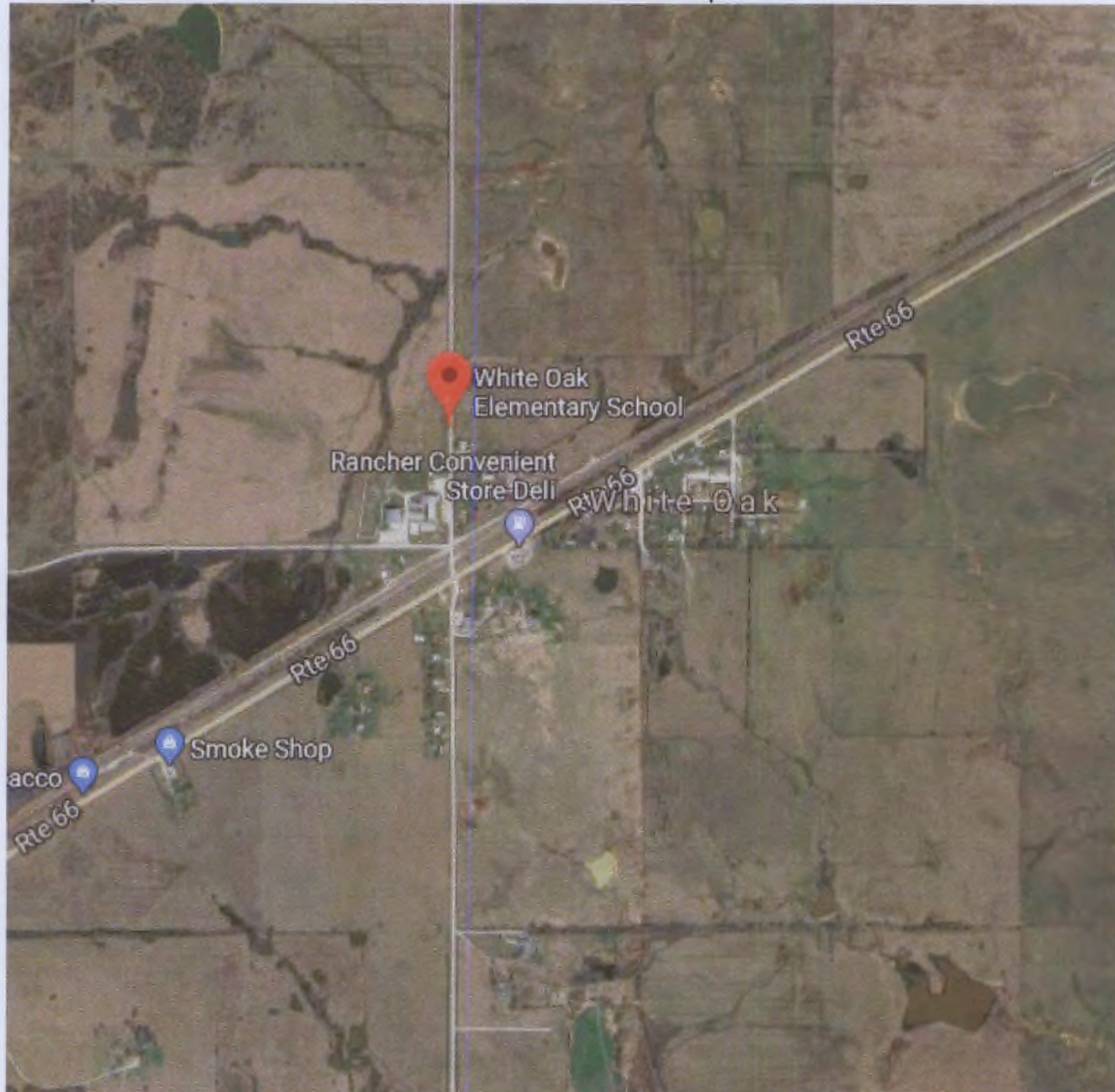
White Oak Indep School Dist I (White Oak) is located in rural northeast Oklahoma. Attendance was only 46 students for Fall enrollment 2016-17. The district is in an underserved area with 48% of the students Native American and 87% eligible for free/reduced lunch.

The 10 Mbps fiber connection provided by Northeast Rural Services provides critical connectivity for this school's students who depend on reliable internet access to meet the educational needs of this underserved population.



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The map below shows the rural location of White Oak Elementary School.



White Oak's Internet Access requested on FRN 1799020240 was a result of the bid period conducted in 2014, FCC Form 470 # 735190001142013. The contract originally signed 1/10/2014 for \$5040.00/month was amended 1/7/2015 for lower pricing to \$4,890.00/month.

The competitive bidding period was analyzed by the Public Utility Division (PUD) of the Oklahoma Corporation Commission on Cause No. PUD 201500431. The Report and Recommendation of the Administrative Law Judge (ALJ) dated June 27, 2017 provides additional details on the bid comparisons and reasons for the applicant's selection of Northeast Rural Services as their service provider .

The applicant provided the following score sheet prepared December 11, 2013:

### E-RATE 2014-15 BID EVALUATION WORKSHEET (P1: Internet Access)

School/Library Name: White Oak Indep School Dist 1

#### \* Broadband Internet - New (Internet Access)

Vendor (Spin)	Bid Amount	Price ERATE	Price Other	Prior Experience	Personnel Qualifications	Proximity	Quality of Service	Total Points
AT&T (143004662)	\$25,619.40							
AT&T (143004662)								
Points Possible		30	5	25	20	10	10	100

#### Broadband Internet - Existing (Internet Access)

Vendor (Spin)	Bid Amount	Price ERATE	Price Other	Prior Experience	Personnel Qualifications	Proximity	Quality of Service	Total Points
Existing Services (143999999)	\$18,240.00							
Existing Services (143999999)								
OneNet (143015254)	\$18,000.00							
OneNet (143015254)								
RECTec (143018556)	\$302,400.00							
RECTec (143018556)								
Points Possible		30	5	25	20	10	10	100

Broadband New	25,619.40	22		15	20	5	5	67
AT&T 19mb	62,400	18		30	20	10	10	70
RECTEC (10mb)	18,000	30		0	20	5	0	25
OneNet (15mb)	18,064	29		0	10	1	0	11
Burling Point (10mb)								

*Rectec missed bid online, Attached is the correct Bid.*



BurlingPoint submitted a bid for internet access but did not enter their bid online. Thus, you will need to write BurlingPoint in on this Bid Evaluation Worksheet and compare with competing bids.



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PUD determined that the bid from OneNet for 20 Mbps of service for \$1,525.00/month was the lowest cost reasonable bid and used this amount in the determination of funding support. The bid from Burlingpoint was removed from consideration because Burlingpoint did not have a Certificate of Convenience and Necessity in the exchange where White Oak ISD is located. The 9 Mbps bid from AT&T was for bonded T-1s and was not considered the lowest cost because of the lower bandwidth level – 9 Mbps instead of 10 Mbps.

According to guidelines posted on the USAC web site<sup>1</sup>, an applicant may “decide what factors you want to consider in your evaluation and how important each factor is to you. You can use as few or as many evaluation factors as you like, and you can assign percentages or points to the factors you use to reflect their relative importance. However, you must include the price of the eligible products and services as a factor and that factor must be weighted more heavily than any other single factor.”

White Oak considered other factors in accordance with E-rate program rules. Their bid evaluation resulted in the award to Northeast Rural services (dba RecTec). Even though the other bids submitted were lower in price, the superintendent scored Northeast Rural Services (RecTec) higher for prior experience, personnel qualifications, proximity, and quality of service.

The former superintendent for White Oak provided testimony before the Oklahoma Corporation Commission on November 14, 2016 as follows:

Mr. Money was the former superintendent for White Oak (the merit hearing was continued until November 14, 2016 when Mr. Money could be present as requested by the Staff). He held that position from 1998 through 2007 and from 2010 through 2015. At one time, White Oak was a virtual school, serving grades kindergarten through 12 through internet access with onsite testing. From 2010 to date, White Oak served grades kindergarten through eight. In late 2013, White Oak issued an RFP and an amended RFP seeking 10 Mbps of fiber internet access. NRS [Northeast Rural Services] submitted the only responsive bid, offering to provide 10 Mbps dedicated fiber internet access at a cost of \$5,040.00 per month. Burling Point, OneNet and AT&T also submitted bids. White Oak evaluated the bids and selected NRS' bid, stating that White Oak selected NRS because NRS had been providing service to White Oak for over 10 years and White Oak was really satisfied with that service. White Oak noted that OneNet's bid was for more bandwidth than requested and Burling Point was not responsive to queries. White Oak did not choose AT&T because its bid was for less than 10 Mbps, White Oak did not want to decrease the requested 10 Mbps bandwidth, and prior service with AT&T had been seriously problematic with respect to T-1 lines due to weather and outages.

...

Mr. Money testified that he believed NRS was the only bidder that could provide the reliable internet service that White Oak needed. NRS' bid clearly stated the service would be through dedicated fiber, OneNet's bid was not clear as to technology, and previous service with AT&T had been through T-1 lines that were unsatisfactory and that resulted in frequent and long lasting outages. OneNet had technical issues [see oral testimony] in the White Oak area and Mr. Money believed the only way for OneNet to provide service was over AT&T's T-1 lines. The White Oak area is too remote for other providers to build point to point fiber. White Oak was able to obtain

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<sup>1</sup> <http://www.usac.org/sl/applicants/step02/default.aspx> (last visited 12/12/2017)



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that from NRS as Mr. Money became aware that NRS was building a fiber network near the White Oak area.

Mr. Money testified that NRS' service in the past had been excellent. NRS' offices were located nearby, and NRS representatives often came to the school. NRS basically had been providing not only internet access but most all technology services for the school.

Mr. Money testified that the type of educational experiences White Oak students were able to have with NRS' fiber internet services were near priceless. Students had one-to-one devices, could take virtual field trips, could take foreign language classes, and had access to digital library books and textbooks. Every classroom had a smart board. He felt this was important for a school district that was so remote and rural.

As part of the OUSF Cause, Sheila Allgood, Manager, Northeast Rural Services, submitted pre-filed testimony regarding the FY2014-15 bids as follows:

Mrs. Allgood testified that prior to Funding Year (FY) 2014, NRS provided internet services to White Oak using AT&T's T-1 lines. NRS was familiar with all aspects of White Oak's internet system and needs.

...

Mrs. Allgood explained that NRS' bid was higher than OneNet's bid because NRS' bid reflected internet access through dedicated fiber cable, a superior form of extremely reliable internet access. NRS explained to White Oak and then to PUD that the higher cost reflected, in part, the cost of buildout amortized over a five-year period. Thereafter, NRS could provide the superior service at a lower cost.

Mrs. Allgood testified that PUD had accepted NRS' bids at a higher cost of service in other causes. For example, in Cause No. PUD 201500477 (Dahlongah), NRS submitted bids which included a higher cost of service than other bidders due, in part, to the cost of buildout and, in part, for the more reliable, high-speed service. PUD approved NRS' request for OUSF reimbursement, stating that NRS had provided sufficient justification to support selection of NRS' bid without adjustments "due to a previous poor service history" with OneNet, the lowest priced bidder. Similarly, in Cause No. PUD 201500448 (Wynona), NRS' bid was selected even though it was not the lowest-price bid. In that case, the lowest-price bid was not chosen "because its bidder received a low score in experience and availability..."

Mr. Bill Shaw, Account Specialist for NRS testified at the hearing on November 7, 2016 as follows:

Mr. Shaw testified regarding NRS' history with White Oak, stating that NRS had provided technology services to White Oak for many years while White Oak was receiving internet services via AT&T's T-1 lines. Mr. Shaw described the poor service history regarding internet service over the T-1 lines.

Mr. Shaw explained that White Oak was located in a very rural area, miles from any urban or metropolitan areas. Mr. Shaw stated that no other internet service providers offered fiber technology in or near this locale.



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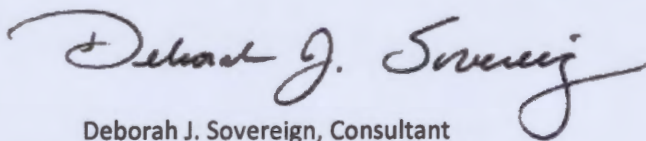
Mr. Shaw testified that NRS responded to White Oak's amended Request for Proposal (RFP) which sought 10 Mbps internet access via fiber. NRS prepared its bid by considering the most economically efficient manner for NRS to provide internet access to White Oak. NRS uses its inhouse engineering department and technologists to make cost determinations necessary to prepare its bids. NRS does not have a tariff, but PUD has approved NRS' methodology for determining cost and for providing the necessary proprietary information to PUD in a confidential manner to back up that determination.

According to Mr. Shaw:

The OUSF Administrator failed to consider that OneNet, PUD's chosen bidder, did not include any transport cost or construction costs to deliver service in its bid of \$1,500.00 per month for 15 Mbps or \$1,525.00 per month for 20 Mbps. A thorough review of the documentation would have shown that prior to 2014 the School District only had access to internet through bonded T-1 lines. The School District had been paying NRS \$1,520.00 per month for bonded (6) T-1 lines. An internet provider can supply 1.5 Mbps per T-1 line; thus, the School District was receiving 9 Mbps over 6 bonded T-1 lines. When the RFP requested 10 Mbps, a provider such as OneNet would either have to build fiber to the school or would have to pay for at least eight T-1 lines for octal-bonded service at 12 Mbps. This oversight by OneNet should have caused the OUSF Administrator to disqualify OneNet's bids.

We understand that the cost for the dedicated fiber circuit provided by Northeast Rural Services was higher than the bid submitted by OneNet. The service provider explained in their testimony that their rates would decrease once the initial contract was completed. The superintendent's concerns regarding reliable service and hidden costs to build out to their location were valid as explained by the superintendent under testimony. The superintendent stated that they had poor service with the lines provided by their previous service provider and the decision to select NRS was carefully made. This specific issue is being addressed by the FCC with the support for fiber build out across the nation. Even though the number of students served is small, these students are underserved and desperately need access to the educational resources as explained by the superintendent in his testimony.

Thank you for your consideration of this matter,



Deborah J. Sovereign, Consultant  
Kellogg & Sovereign Consulting, LLC

\* Cause # corrected 10/3/16 - gws

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION  
OF NORTHEAST RURAL SERVICES, INC.  
FOR FUNDING FROM THE OKLAHOMA  
UNIVERSAL SERVICE FUND FOR  
CHELSEA PUBLIC SCHOOLS  
401 REDBUD LANE  
CHELSEA, OK 74016

)  
)  
)  
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)  
)

CAUSE NO. PUD 201500248

201600248



**FILED**  
SEP 30 2016

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

RESPONSIVE TESTIMONY OF

JAMES L. JONES

FOR

PUBLIC UTILITY DIVISION

SEPTEMBER 30, 2016

**EXHIBIT  
"C"**



**RESPONSIVE TESTIMONY**

**OF**

**James L. Jones**

**September 30, 2016**

*In the Matter of the Application of Northeast Rural Services, Inc. for Funding from the  
Oklahoma Universal Service Fund for Chelsea Public Schools.*

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<b>OUSF ADMINISTRATOR'S REVIEW PROCESS .....</b>	<b>5</b>
<b>RECOMMENDATION.....</b>	<b>16</b>

## INTRODUCTION

1 Q: Please state your name, by whom you are employed, in what capacity, and your  
2 business address.

3 A: My name is James L. Jones. I am employed as a Regulatory Manager in the Public Utility  
4 Division ("PUD") of the Oklahoma Corporation Commission ("Commission" or "OCC").  
5 My business address is the Jim Thorpe Office Building, Room 580, 2101 N. Lincoln  
6 Boulevard, Oklahoma City, Oklahoma 73105.  
7

8 Q: How long have you been employed by the OCC?

9 A: I was employed by the Commission in the PUD from November 2007 until December  
10 2010 working in the Energy and Water group, and I rejoined the PUD in March of 2012  
11 as Regulatory Manager working primarily in the Telecommunications group.  
12

13 Q: Please summarize your educational background and professional experience.

14 A: I have a Bachelor of Science degree in business administration with a major in marketing  
15 from the University of Central Oklahoma in Edmond, Oklahoma. I was employed by  
16 SBC for more than 32 years. Most of those years were spent working in the regulatory,  
17 public affairs, and marketing organizations. Please see the attached curriculum vitae for  
18 additional information (Exhibit A).  
19

20 Q: What are your present duties?



1 A: Yes, Chelsea received a total of eighteen (18) bid responses from five (5) providers for  
2 the Internet access service and WAN service.

3  
4 Q: When a school examines and evaluates the bids received for eligible services, what  
5 should be the primary factors used in evaluating the different bids?

6 A: The primary factor should be the price of the service being provided when compared to  
7 other service options. The service history an entity has had with a service provider should  
8 also be a significant consideration.

9  
10 Q: What criteria did Chelsea utilize in its bid evaluations for FY 2015?

11 A: The Bid Evaluation sheet provided for the E-Rate FY 2015 indicates that the following  
12 criteria were used in evaluating the bids:

- 13 • Price-Erate
- 14 • Price-Other Costs
- 15 • Prior Experience
- 16 • Personnel Qualifications
- 17 • Responsiveness
- 18 • Technical Merit
- 19

20 Q: Of the criteria included on the Bid Evaluation Grid, which are appropriate for the  
21 OUSF Administrator to consider in determinations?

22 A: All of the criteria mentioned above would seem to be reasonable considerations in  
23 making a selection for a service provider. However, price should be the primary factor  
24 considered in all requests for funding from the OUSF. The OUSF Administrator's  
25 internal review guidelines (known as OUSF operational procedures / audit program) also

1 call for an evaluation of the bid process, application of a lowest cost reasonable bid  
2 standard, to meet the public interest standard. OUSF funds should only be paid when the  
3 public interest is served.

4 Likewise, USAC's webpage also indicates that "price of the eligible products and  
5 services must be the primary evaluation factor overall", not reliability, not the  
6 technology, but price must be the primary evaluation factor overall.

7  
8 **Q: Do you agree with the results of the bid evaluation process used by Chelsea to select**  
9 **NRS as its Internet service provider for FY 2015?**

10 **A:** No. Chelsea submitted a request for bids for FY 2015 for a minimum 20 Mbps of  
11 Internet access and WAN service. It received a total of eighteen (18) bids, four (4) of  
12 which were WAN and fourteen (14) for Internet access service. Of the submitted bids,  
13 four (4) were for 100 Mbps Internet access service and two (2) were for 100 Mbps WAN  
14 service. One of these bids was submitted by NRS for \$6,930.00 per month, and the other  
15 bid was submitted by Windstream for \$1,358.50 per month. Chelsea chose NRS' bid,  
16 even though Windstream's bid was \$5,571.50 less than NRS' bid. NRS did submit the  
17 lowest cost reasonable bid for the requested WAN service; however NRS' bid for  
18 Internet access was over four (4) times more than the Windstream bid.

19  
20 **Q: Please explain the consideration of public interest as determined by the OUSF**  
21 **operational procedures / audit program.**



1  
2 **Q: Is preferred technology a factor that the OUSF Administrator considers during its**  
3 **bid evaluation process?**

4 **A:** No. The OUSF Administrator did not consider the type of technology employed in  
5 provisioning the service in its determination. The Administrator uses a "technology  
6 neutral approach" during its evaluation of bids. The school is more than welcome to  
7 consider the technology utilized by a bidder in the school's selection process, but the  
8 OUSF Administrator believes that funding support should be based upon the bandwidth  
9 requested, the service provider's ability to provision that bandwidth regardless of the  
10 technology employed and the price of the service.

11 Title 17 O.S. § 139.109.1(B)(5) clearly indicates that "the Oklahoma Universal Service  
12 Fund Beneficiary shall not limit bidders based upon technology". Even though this is a  
13 recent modification to the OUSF statutes, this has been a cornerstone of the  
14 Administrator's review process long before the establishment of this provision in the  
15 Oklahoma statutes. Oklahoma legislators understood that limiting bids based upon  
16 technology has the potential to limit service providers' ability to bid their services and  
17 likewise establishes too many opportunities for "bid structuring". The OUSF  
18 Administrator has not, and will not, limit the bid evaluation process based upon a  
19 school's attempt to dictate technology.

20  
21 **Q: Are you familiar with the Request for Reconsideration filed by NRS on September**  
22 **6, 2016?**

23 **A:** Yes.

**CERTIFICATE OF MAILING**

This is to certify that on September 30, 2016, a true and correct copy of the above and foregoing *Notice of Responsive Testimony of Farzad Khalili for Cause No. PUD 201600248* was sent via electronic mail and/or United States Postal Service, postage fully prepaid thereon to the following interested parties:

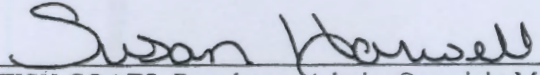
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Chelsea Public Schools  
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Chelsea, Oklahoma 74016  
mcspadden@chelseadragon.net

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dsmith@loganlowry.com  
qstine@loganlowry.com

  
TISH COATS, Regulatory Admin. Oversight Manager  
BARBARA COLBERT, Administrative Assistant  
SUSAN HARWELL, Asst. PUD Regulatory Analyst  
KELI WEBB, Administrative Assistant  
OKLAHOMA CORPORATION COMMISSION



REPLACEMENT FOR FAX FILED ON  
**OCT 20 2016**  
FILED/RECEIVED

BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA

**OCT 24 2016**

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION )  
OF NORTHEAST RURAL SERVICES, INC. )  
FOR FUNDING FROM THE OKLAHOMA )  
UNIVERSAL SERVICE FUND FOR ) CAUSE NO. PUD 201600248  
CHELSEA PUBLIC SCHOOLS )

**JAMES L. JONES**  
**SUMMARY OF TESTIMONY**

**October 14, 2016**

<b><u>Pg/Ln</u></b>	<b><u>Testimony</u></b>
5/2-15	In December of 2014 and February of 2015, no OUSF statute or regulation existed which required public schools to competitively bid for internet access service in order to receive OUSF funding.
6/20 - 7/7	When a telecommunication company requests funding support, i.e. money on behalf of the eligible entity from the Oklahoma Subsidy Program known as OUSF, the administrator informs the applicant what information is needed in order to receive the requested subsidy.
7/13-18	The Administrator can change what information is needed to receive OUSF support from application to application.
11/9-16	No OUSF statute or regulation authorizes the administrator to request different types of information from application to application.
12/10-24	If a service provider has a CCN then PUD considers that provider to have the ability to provide service whether they have facilities to the school or not.
14/13-16	It is the analyst's responsibility to ask for the information need to decipher and analyze the funding request.
15/6-17	PUD first started evaluating funding requests with the public interest statute in mind in 2014.
20/2 - 21/2	17 O.S. 139.109(C) provides that in the most efficient manner for the carrier which would apply to each bidder.

**EXHIBIT  
"D"**

<u>Pg/Ln</u>	<u>Testimony</u>
22/12-22	Mr. Jones believes every bid is a reasonable bid if the carrier has a certificate of convenience and necessary. There are no service issues associated with that carrier and the carrier appears to stand ready to provide the bandwidth needs of the school.
23/1-4	PUD does no investigation to determine if a carrier is ready to provide service other than insuring that they have a CCN.
31/16-17	Mr. Jones prepared the MOOP.
31/18-23	The MOOP was a combination of PUD's interpretation of the statute directives that they had gotten from the commissioners during signing agenda.
34/1-5	PUD has determined to implement the 109(E) public interest standard to the lowest cost reasonable bid evaluation.
35/19 - 36/4	PUD determined how it would implement 109(E) relative to the public interest prior to the May 6, 2014 signing agenda in which commissioners provided a perceived directive as to the application for 109(E) to request for reimbursement from OUSF.
37/8-10, 17-21	PUD must perform an investigation prior to modifying any request for a OUSF reimbursement.
38/8-14	It is the PUD analyst's responsibility to be able to support a funding recommendation with empirical evidence to support the recommendation and they secure that through documents from USAC, from the school, and from the carrier.
49/23 - 50/11	PUD uses the operational OUSF procedures and audit program to conduct its investigation required by 139.109(E).
52/20 - 53/9	A PUD analyst determines how much investigation is necessary to justify a determination.
55/25 - 56/8	The operational procedures that PUD analysts use do not reference the public interest but do address the lowest cost bid standard.
60/15 - 61/2	When PUD posted on their website their operational procedures contained in the MOOP many internet service providers objected to those procedures as illegal rules that had not been enacted pursuant to the Administrative Procedures Act.
63/15-20	The operational procedures for the OUSF and auto program serve as internal rules to the analysts in performing their funding determination.

<b><u>Pg/Ln</u></b>	<b><u>Testimony</u></b>
64/12-21	The lowest cost bid may not be reasonable for various reasons. Typically the reason is the carrier has a bad service history with the school.
65/23 - 66/17	The audit program or operational procedures have been refined and simplified over time.
69/13-25	PUD operational procedures include issuing possible data requests to the school or the service provider.
70/7 - 71/17	At one time, PUD compared reasonableness of rates by considering other providers within 10 miles of the school requesting reimbursement.
74/18-25	PUD has never considered technology such as fiber, copper, or wireless.
77/3-9	The operational procedures or audit program instructs the analyst to consider reliability of service, configurations, timing of service of availability, additional services offered, prior service history, and experience with bidders.
78/2-7	Reliability of service is whether the service is up and performing.
78/22 - 79/9	Reliability of service and prior service history means the same thing, i.e. were the services reliable, did the school have service issues? Could they count on the internet connection being up as it should be?
80/13-15	Experience with bidders could mean a good experience with bidders.
80/22 - 82/3	PUD did not consider a positive experience with the bidder only whether the school had documented negative issues with the provider.
82/23 - 83/3	The lowest cost reasonable bid can never be one that considers great service provided by the provider to the school if that provider's bid is higher.
85/7-22	While the purpose of the OUSF to maximize availability of internet access to public schools so that Oklahoma children will be able to utilize the internet to enhance learning opportunities and be better prepared for the future is furthered by a service provider's good provision of internet service, that is not a factor in the lowest reasonable cost bid standard.
87/4-24	Even though timing of service availability is a factor listed in PUD's operational procedures and audit program, PUD does not look at whether the bidder has facilities in the area.
92/2-7, 96/9 - 97/13	In Cause 2014 00071, PUD approved reimbursement for a mid-range bidder, Meet Point, based at least in part on prior positive service history.

<u>Pg/Ln</u>	<u>Testimony</u>
97/23 - 98/11	PUD no longer considers positive service history in analyzing requests for reimbursement.
99/20-23	It is not possible for providers to anticipate how to comply with OUSF funding reimbursement when there are inconsistent decisions in determinations.
110/2-14	Location of the service provider is irrelevant to the lowest reasonable cost bid standard.
111/3 - 112/3	The fact that service provider is located 5 or 6 hours from a school is not part of PUD's consideration in determining reimbursement requests. The only consideration is if the school could demonstrate they had previously had service from that provider and the provider was not responsive in repairing outages or providing service.
114/23 - 116/1	PUD requires schools to provide documented proof of previous negative service issues even though the procedures do not list that as a requirement.

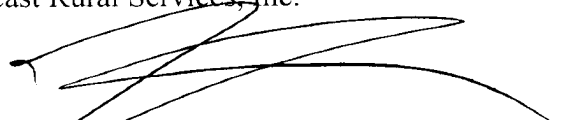
Dated this 20<sup>th</sup> day of October, 2016.

Respectfully submitted,

LOGAN & LOWRY, LLP  
101 South Wilson Street  
P. O. Box 558  
Vinita, OK 74301  
(918) 256-7511  
(918) 256-3187 (*fax*)  
[dsmith@loganlowry.com](mailto:dsmith@loganlowry.com)  
[mtorrone@loganlowry.com](mailto:mtorrone@loganlowry.com)  
[qstine@loganlowry.com](mailto:qstine@loganlowry.com)

Attorneys for Applicant,  
Northeast Rural Services, Inc.

By:

  
\_\_\_\_\_  
Donna L. Smith, OBA #12865  
Michael T. Torrone, OBA #21848  
Quinn Stine OBA #30741

**CERTIFICATE OF SERVICE BY MAIL AND/OR E-MAIL**

The undersigned certifies that on this 20<sup>th</sup> day of October, 2016, a true and correct copy of the foregoing was mailed, postage prepaid, and/or was sent electronically as indicated to:

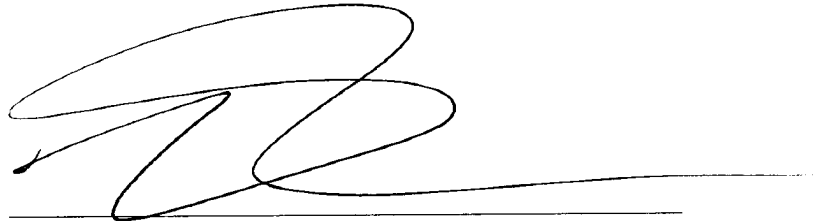
Nicole Stephens, OUSF Fund Manager  
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[victoria.korrekt@oag.ok.gov](mailto:victoria.korrekt@oag.ok.gov)

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a horizontal line extending to the right.

Michael T. Torrone



Username: MFIELDS

## RFP Bid Information

### E-Rate Program Year 2014 (07/01/14-06/30/15)

White Oak Indep School Dist 1  
27355 South 4340 Road  
Vinita, OK 74301-9804  
(918) 256-4484

#### REMINDER TO BIDDERS:

Before submitting bids on behalf of this applicant, check to be sure you have completed each of the items listed below. If not, please do so prior to submitting your bids.

- 2 Complete required forms, Read and understand Notice to Service Providers and General Specifications ([www.kelloggllc.com/eratebids.aspx](http://www.kelloggllc.com/eratebids.aspx))
- 2 Read and understand Lowest Corresponding Price rule (<http://www.usac.org/si/service-providers/step02/lowest-corresponding-price.aspx>)
- 2 Read and understand USAC's Eligible Services (<http://www.usac.org/si/applicants/beforeyoubegin/eligible-services/default.aspx>). Know the eligibility of the products and services you are bidding on and be able to enter accurate cost-allocations.
- 2 Practice entering your bids using Kellogg & Sovereign School District (sample school) as your test site and following the steps in the Step-by-Step Bidding Guide ([www.kelloggllc.com/docs/sp/step\\_by\\_step\\_bidding\\_v16.pdf](http://www.kelloggllc.com/docs/sp/step_by_step_bidding_v16.pdf))
- 2 Review RFP Changes from the main menu ([www.erate470.com](http://www.erate470.com))
- 2 Attend required walk-throughs ([www.erate470.com](http://www.erate470.com))

If you are submitting a blanket bid, contact KSLLC for instructions and access to blanket bidding. Any errors that require KSLLC to make corrections will result in charges for the costs incurred.

White Oak Indep School Dist 1 - Program Year 2014 (07/01/14-06/30/15)	
General RFP Information	
<b>Due Date:</b>	<b>11/26/2013</b>
<b>Form 470-1:</b>	735190001142013
<b>Form 470 Date:</b>	09/20/2013
<b>Form 470-2:</b>	635890001142802
<b>Forum Link:</b>	
<b>Bidding Notes:</b>	School District Contact by E-mail only: David Money, Superintendent Email: <a href="mailto:dmoney@whiteoakschool.net">dmoney@whiteoakschool.net</a>
<b>RFP Change 10/25/2013:</b> Added request for 10 Mbps Internet Access - New Broadband Service. Extended bid closing date to 11/26/2013.	
P1: Voice Services: Priority One - Voice Services	
Voice Lines - Local Phone Service (Telephone Service)	
Number of voice lines for local phone service requested (Not extensions). Bidders to include calling features and other services as needed to support the quantity/location of lines requested.	
Current #: <u>3</u>	# to ADD: <u>1</u> Total # Next Yr: <u>4</u> (147)
Long Distance Service (Telephone Service)	
Long Distance Service	
Request Next Year? <u>YES</u>	# Lines: <u>  </u> # Minutes: <u>1</u> (148)
P1: Circuits: Priority One - Circuits	
Circuits - Existing (Digital Transmission Services)	
Circuits - Existing (Digital Transmission Services). Use "District" location on bid. Provide details of to-from locations in	

**EXHIBIT  
"E"**



White Oak Indep School Dist 1 - Program Year 2014 (07/01/14-06/30/15)

description or attach schedule. See applicant schedule for details.

Type: T-1 Speed: 1.54 Mbps Qty: 6 To Location: District (149)

Notes: (6) Point to Point T-1 Circuits.

P1: Internet Access: Priority One - Internet Access

Broadband Internet - New (Internet Access)

Broadband Internet - New Service. Include installation and construction charges as needed to connect to dmarc on applicant site. Use "District" for location. Provide dmarc location in description.

DMARC: District Type: Fiber Qty: 1 Speed: 10 Mbps (981)

Notes: Need to upgrade Internet access to meet educational needs of the district. Please provide bids for bandwidth options in our area with incremental pricing up to 10 Mbps. Service provider shall provide all conduit necessary to reach the dmarc.

Broadband Internet - Existing (Internet Access)

Broadband Internet Access - Existing Service. Bidders to use "District" location on bids. List location of dmarc in bid description.

DMARC: District Type: Other Qty: 1 Speed: 9 Mbps (150)

E-Mail Service (E-mail Service)

E-Mail Services. "ISP" indicates services to be provided with Internet Access services. #Staff=number of staff email accounts; #Student=number of student email accounts.

Request Next Year? YES Type: As Recommended #Staff: 1 #Student: \_ (151)

P2: Maintenance: Priority Two - Maintenance

Basic Maintenance (Maintenance and Technical Support)

Basic Maintenance. Bidder may add items from list provided by applicant, modify items, and add items to be maintained.

Request Next Year? YES (152)

Notes: Maintenance requested for all existing equipment.

Last updated by MFIELDS on 10/25/2013 10:38 AM





## E-Rate Funding Year 2014 - BID FOR SERVICES

AT&T  
SPIN: 143004662

White Oak Indep School Dist 1 (140126)  
Location: District BEN  
Category: P1: Internet Access

Manufacturer	Product Name	Part #	Qty	List Price	Sell Price	Pd	Ext. Price	Elig Pct	Ext. Eligible
<b>Broadband Internet - New (Internet Access)</b>									
ATT	MIS	143001192	1	2,134.95	2,134.95	12	25,619.40	100	25,619.40
Description: Customer will need to request Site Survey to determine if there will be a cost for conduit									
Total for Broadband Internet - New:							\$25,619.40		\$25,619.40
Total for P1: Internet Access:							\$25,619.40		\$25,619.40

### Proposal/Contract Contingent upon E-Rate Funding & School Board Approval

Proposed By:

*Jan Cooley*

10/29/2013

Date

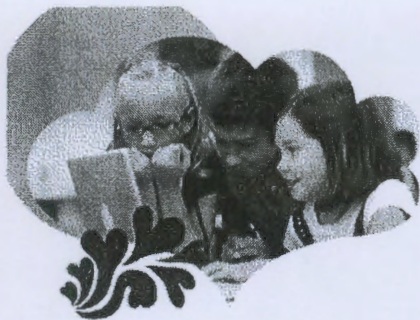
Jan Cooley  
Sr. Account Manager  
AT&T  
800 N Harvey  
Oklahoma City, OK 73102  
(405) 319-6003

Accepted By:

David Money  
Superintendent  
27355 South 4340 Road  
Vinita, OK 74301-9804  
(918) 256-4484

Date

EXHIBIT  
"F"

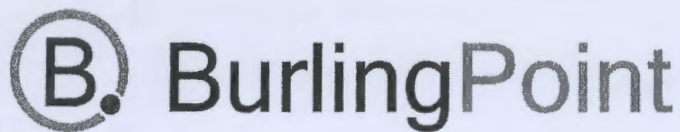


## Pricing Solution

Pricing for Managed Internet Service (MIS) is based on a 36-month term requires contract.

	<u>Monthly</u>	<u>Install</u>
MIS Plus – 9 Meg MLPPP (includes managed router)	\$2134.95	\$00.00





09/23/2013

Dear Debi Sovereign Or Jane Kellogg & David Money,

Burling Point is happy to provide you this proposal for your E-Rate Funding Year 2014 Internet Access application. Burling Point is the leading provider of technology solutions to K-12 schools nationwide. Our commitment to high quality customer service and experience with the E-Rate process makes Burling Point the right choice for your Internet needs.

The following page will detail the scope of our services, costs and pricing terms. We know your time is limited, so we have highlighted some items that we know are most important to you:

- 100% Uptime Guarantee
- 24/7/365 Customer Support
- Easy to understand, E-Rate compliant invoicing
- Net 30 day payment terms

In addition to high quality service, we understand that the issue you care most about is cost. We pride ourselves on always being upfront and clear on the costs of our services. We will never overcharge you, or hide any fees. You will find a summary of all costs, including E-Rate eligible taxes and fees, in this proposal.

We look forward to working with you and delivering your school the highest quality service available. Once you become a Burling Point customer, you will find that our experienced accounting team is very easy to work with and open to either SPI or BEAR E-Rate invoicing. On the rare occasion that you will need to contact our support staff, you will find them to be friendly, responsive and supremely competent.

Please feel free to contact me day or night with any questions or concerns about this proposal. To move forward with Burling Point as your service provider, please contact me directly at your convenience.

I look forward to working with you.

Sincerely,

David Wojtonik, Partner  
Burling Point, LLC  
Office: 312-212-8601 x102  
Mobile: 312-848-6973  
Fax: 312-212-8054

Email: david.wojtonik@burlingpoint.com



OneNet  
SPIN: 143015254

White Oak Indep School Dist 1 (140126)  
Location: District BEN  
Category: P1: Internet Access

## E-Rate Funding Year 2014 - BID FOR SERVICES

Manufacturer	Product Name	Part #	Qty	List Price	Sell Price	Pd	Ext. Price	Elig Pct	Ext. Eligible
<b>Broadband Internet - Existing (Internet Access)</b>									

15mb	1	1,500.00	1,500.00	12	18,000.00	100	18,000.00		
------	---	----------	----------	----	-----------	-----	-----------	--	--

Description: OneNet Internet service provides the connection from your location to our hub site. As part of our standard package OneNet Internet service customers receive: unlimited email services, web hosting, Quality of Service, DNS, unlimited video conferencing and related technical support. There is no reduction in cost if customer does not utilize any component of the standard package.

Customer Provided Router

- 15mb will require router with 2 Fast Ethernet Interfaces; one interface for Internet connection and one for LAN

Options

OneNet Provided Router (ERate Priority One On-Premise Equipment)

\$89 per month for Juniper SRX220. The router shall remain the property of OneNet, therefore OneNet reserves the right to use for other customers.

Maintenance of router will be OneNet's responsibility. Customer's local network will not be dependent on the OneNet provided router. (Not Oklahoma Universal Service Fund eligible, customer will pay their percentage after ERate discount.)

Content Filtering pricing is available upon request. (Not ERate eligible service)

Total for Broadband Internet - Existing:	\$18,000.00	\$18,000.00
Total for P1: Internet Access:	\$18,000.00	\$18,000.00

### Proposal/Contract Contingent upon E-Rate Funding & School Board Approval

Proposed By:

*Arni Layman*

11/05/2013

Arni Layman

Date

Assistant Director of Administration

OneNet

655 Research Parkway Suite 200

OKLAHOMA CITY, OK 73104

(405) 225-9444

Accepted By:

David Money

Date

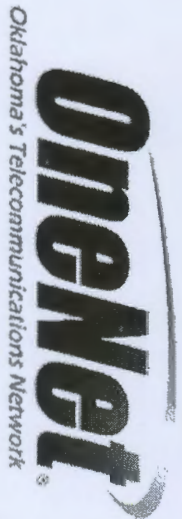
Superintendent

27355 South 4340 Road

Vinita, OK 74301-9804

(918) 256-4484





OneNet  
SPIN: 143015254

White Oak Indep School Dist 1 (140126)  
Location: District \*OPTIONS\* BEN  
Category: P1: Internet Access

## E-Rate Funding Year 2014 - BID FOR SERVICES

Manufacturer	Product Name	Part #	Qty	List Price	Sell Price	Pd	Ext. Price	Elig	Pct	Ext. Eligible
<b>Broadband Internet - New (Internet Access)</b>										

20mb	1	1,525.00	1,525.00	12	18,300.00	100	18,300.00			
------	---	----------	----------	----	-----------	-----	-----------	--	--	--

Description: OneNet Internet service provides the connection from your location to our hub site. As part of our standard package OneNet Internet service customers receive: unlimited email services, web hosting, Quality of Service, DNS, unlimited video conferencing and related technical support. There is no reduction in cost if customer does not utilize any component of the standard package.

- Customer Provided Router
- 20mb will require router with 2 Fast Ethernet Interfaces; one interface for internet connection and one for LAN

Options  
OneNet Provided Router (ERate Priority One On-Premise Equipment)  
\$89 per month for Juniper SRX220. The router shall remain the property of OneNet, therefore OneNet reserves the right to use for other customers. Maintenance of router will be OneNet's responsibility. Customer's local network will not be dependent on the OneNet provided router. (Not Oklahoma Universal Service Fund eligible, customer will pay their percentage after ERate discount.)

Content Filtering pricing is available upon request. (Not ERate eligible service)

Total for Broadband Internet - New:	\$18,300.00	\$18,300.00
Total for P1: Internet Access:	\$18,300.00	\$18,300.00

### Proposal/Contract Contingent upon E-Rate Funding & School Board Approval

Proposed By:

*Ami Layman*

11/04/2013

Ami Layman

Date

Assistant Director of Administration

OneNet

655 Research Parkway Suite 200

OKLAHOMA CITY, OK 73104

(405) 225-9444

Accepted By:

David Money

Date

Superintendent

27355 South 4340 Road

Vinita, OK 74301-9804

(918) 256-4484



**RECTec**  
SPIN: 143016556

**White Oak Indep School Dist 1 (140126)**  
Location: District BEN  
Category: P1: Internet Access

## E-Rate Funding Year 2014 - BID FOR SERVICES

Manufacturer	Product Name	Part #	Qty	List Price	Sell Price	Pd	Ext. Price	Pct	Ext. Eligible
--------------	--------------	--------	-----	------------	------------	----	------------	-----	---------------

10Mbps DIA	Broadband Internet - Existing (Internet Access)		5	5,040.00	5,040.00	12	302,400.00	100	302,400.00
------------	---	--	---	----------	----------	----	------------	-----	------------

Description: LOC A: Vinita POP LOC Z: 27355 S. 4340 Rd., Vinita, OK

This quote is for 10Mbps dedicated fiber internet circuit and internet maintenance with transport from the RECTec router to "Z Location" demarc. Quote also includes email account setup, domain registration, DNS and internet maintenance. Nonrecurring charges include onsite internet, email setup, and/or additional, required equipment. School should expect to receive 100% funding for this service based on 90% provided by E-rate and 10% provided by OUSF based on 2 buildings with classrooms.

The above quoted service does not include applicable taxes or other fees imposed by regulators.

RECTec Confidential and Proprietary

Total for Broadband Internet - Existing:	\$302,400.00	\$302,400.00
Total for P1: Internet Access:	\$302,400.00	\$302,400.00

### Proposal/Contract Contingent upon E-Rate Funding & School Board Approval

Proposed By:

*Sheila Allgood*

Sheila Allgood  
Manager  
RECTec  
212 S Main  
Grove, OK 74344  
(918) 256-9441

David Money  
Superintendent  
27355 South 4340 Road  
Vinita, OK 74301-9804  
(918) 256-4484

Date

10/29/2013



White Oak - NRS Pricing Summary 7/1/14 - 6/30/15

Dedicated Internet Access (10 Mbps @ \$100/Mb)	\$	1,000.00
Internet Maintenance Services (IMS)	\$	150.00
MRC - Construction for DIA - 2 Strands Fiber*	\$	3,890.00
Total Monthly Cost	\$	5,040.00
Total Annual Cost	\$	60,480.00
Total 5 Year Cost	\$	302,400.00

White Oak - NRS Pricing Summary 7/1/15 - 6/30/16

Dedicated Internet Access (10 Mbps @ \$100/Mb)	\$	1,000.00
MRC - Construction for DIA - 2 Strands Fiber*	\$	3,890.00
Total Monthly Cost	\$	4,890.00
Total Annual Cost	\$	58,680.00
Total 5 Year Cost	\$	293,400.00

\*Construction Cost Explanation

Estimated Up-Front Construction Costs	\$	81,538
15% Profit	\$	12,231
Construction Cost Plus Profit	\$	93,768
Future Valuation Factor 20% Cost of Capital (2.48832)	\$	233,325
MRC - Total Future Value /60 Months (Rounded)	\$	3,890

**EXHIBIT**  
**"G"**

## Final Mile Bid Sheet

RECtec / White Oak ISD 1 - IA

Project Name:

4/13/2018

Date:

5 Years				5yr- 15%
Material & Labor				\$ 81,538.00
				\$ 81,538.00
Profit	15%			\$ 12,230.70
	20%			
	25%			
	30%			
	35%			
	40%			
	45%			
	50%			
Total				\$ 93,768.70

5 yr (60 installments)

		# of Poles	Cost per Pole	
20% Cost of Capital				\$233,327
Monthly Payment				\$3,889
Pole Attachments/month		84	\$30.00	\$210
Insurance - 3% per year	\$ 2,446.14			\$204
Total Monthly Payment				\$4,303

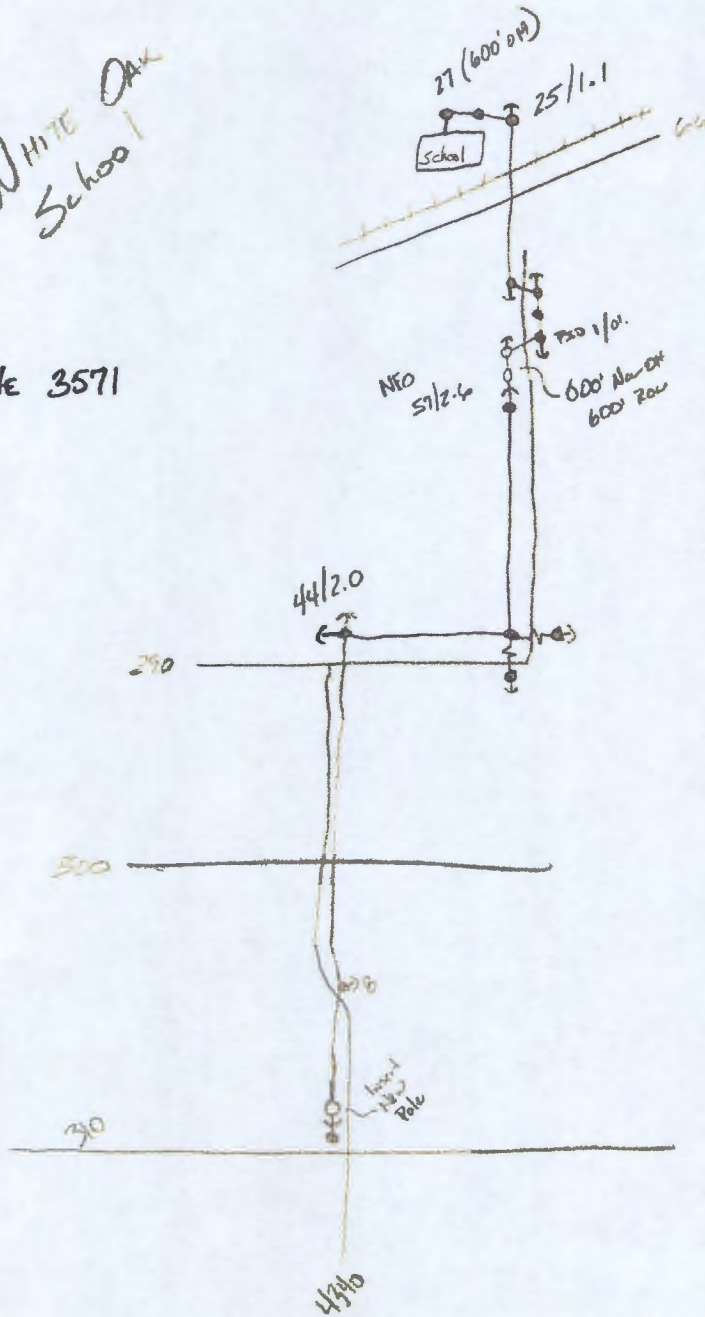


**TABLE 1**  
Future Value of \$1  
 $FV = \$1(1 + i)^n$

n/	1.0%	1.5%	2.0%	2.5%	3.0%	3.5%	4.0%	4.5%	5.0%	5.5%	6.0%	7.0%	8.0%	9.0%	10.0%	11.0%	12.0%	20.0%
1	1.01000	1.01500	1.02000	1.02500	1.03000	1.03500	1.04000	1.04500	1.05000	1.05500	1.06000	1.07000	1.08000	1.09000	1.10000	1.11000	1.12000	1.20000
2	1.02010	1.03022	1.04040	1.05063	1.06090	1.07123	1.08160	1.09203	1.10250	1.11303	1.12360	1.14490	1.16640	1.18810	1.21000	1.23210	1.25440	1.44000
3	1.03030	1.04568	1.06121	1.07689	1.09273	1.10872	1.12486	1.14117	1.15763	1.17424	1.19102	1.22504	1.25971	1.29503	1.33100	1.36763	1.40493	1.72800
4	1.04060	1.06136	1.08243	1.10381	1.12551	1.14752	1.16986	1.19252	1.21551	1.23882	1.26248	1.31080	1.36049	1.41158	1.46410	1.51807	1.57352	2.07360
5	1.05101	1.07728	1.10408	1.13141	1.15927	1.18769	1.21665	1.24618	1.27628	1.30696	1.33823	1.40255	1.46933	1.53862	1.61051	1.68506	1.76234	2.48832
6	1.06152	1.09344	1.12616	1.15969	1.19405	1.22926	1.26532	1.30226	1.34010	1.37884	1.41852	1.50073	1.58687	1.67710	1.77156	1.87041	1.97382	2.98598
7	1.07214	1.10984	1.14869	1.18869	1.22987	1.27228	1.31593	1.36086	1.40710	1.45468	1.50363	1.60578	1.71382	1.82804	1.94872	2.07616	2.21068	3.58318
8	1.08286	1.12649	1.17166	1.21840	1.26677	1.31681	1.36857	1.42210	1.47746	1.53469	1.59385	1.71819	1.85093	1.99256	2.14359	2.30454	2.47596	4.29982
9	1.09369	1.14339	1.19509	1.24886	1.30477	1.36290	1.42331	1.48610	1.55133	1.61909	1.68948	1.83846	1.99900	2.17189	2.35795	2.55804	2.77308	5.15978
10	1.10462	1.16054	1.21899	1.28008	1.34392	1.41060	1.48024	1.55297	1.62889	1.70814	1.79085	1.96715	2.15892	2.36736	2.59374	2.83942	3.10585	6.19174
11	1.11567	1.17795	1.24337	1.31209	1.38423	1.45997	1.53945	1.62285	1.71034	1.80209	1.89830	2.10485	2.33164	2.58043	2.85312	3.15176	3.47855	7.43008
12	1.12683	1.19562	1.26824	1.34489	1.42576	1.51107	1.60103	1.69588	1.79586	1.90121	2.01220	2.25219	2.51817	2.81266	3.13843	3.49845	3.89598	8.91610
13	1.13809	1.21355	1.29361	1.37851	1.46853	1.56396	1.66507	1.77220	1.88565	2.00577	2.13293	2.40985	2.71962	3.06580	3.45227	3.88328	4.36349	10.69932
14	1.14947	1.23176	1.31948	1.41297	1.51259	1.61869	1.73168	1.85194	1.97993	2.11609	2.26090	2.57853	2.93719	3.34173	3.79750	4.31044	4.88711	12.83918
15	1.16097	1.25023	1.34587	1.44830	1.55797	1.67535	1.80094	1.93528	2.07893	2.23248	2.39656	2.75903	3.17217	3.64248	4.17725	4.78459	5.47357	15.40702
16	1.17258	1.26899	1.37279	1.48451	1.60471	1.73399	1.87298	2.02237	2.18287	2.35526	2.54035	2.95216	3.42594	3.97031	4.59497	5.31089	6.13039	18.48843
17	1.18430	1.28802	1.40024	1.52162	1.65285	1.79468	1.94790	2.11338	2.29202	2.48480	2.69277	3.15882	3.70002	4.32763	5.05447	5.89509	6.86604	22.18611
18	1.19615	1.30734	1.42825	1.55966	1.70243	1.85749	2.02582	2.20848	2.40662	2.62147	2.85434	3.37993	3.99602	4.71712	5.55992	6.54355	7.68997	26.62333
19	1.20811	1.32695	1.45681	1.59865	1.75351	1.92250	2.10685	2.30786	2.52695	2.76565	3.02560	3.61653	4.31570	5.14166	6.11591	7.26334	8.61276	31.94800
20	1.22019	1.34686	1.48595	1.63862	1.80611	1.98979	2.19112	2.41171	2.65330	2.91776	3.20714	3.86968	4.66096	5.60441	6.72750	8.06231	9.64629	38.33760
21	1.23239	1.36706	1.51567	1.67958	1.86029	2.05943	2.27877	2.52024	2.78596	3.07823	3.39956	4.14056	5.03383	6.10881	7.40025	8.94917	10.80385	46.00512
25	1.28243	1.45095	1.64061	1.85394	2.09378	2.36324	2.66584	3.00543	3.38635	3.81339	4.29187	5.42743	6.84848	8.62308	10.83471	13.58546	17.00006	95.39622
30	1.34785	1.56308	1.81136	2.09757	2.42726	2.80679	3.24340	3.74532	4.32194	4.98395	5.74339	7.61226	10.06266	13.26768	17.44940	22.89230	29.95992	237.37631
40	1.48886	1.81402	2.20804	2.68506	3.26204	3.95926	4.80102	5.81636	7.03999	8.51331	10.28572	14.97446	21.72452	31.40942	45.25926	65.00087	93.05097	1469.77160

White Oak  
School

Quote 3571



22/00 Fiber

27 PSO  
57 NEO  
3 New  
600' ROW  
4 MK Rdy

9  
~~1111~~



**BOLT FIBER OPTIC SERVICES**

Phone: 918-787-9316

Fax: 918-256-9380

27039 S. 4440 Road, OK LIC. 440521

Vinita, OK 74301

**Quote**No.: **3571**Date: **10/4/2013**

Prepared for:

Prepared by: Shane Burgess

Account No.: 1010

RECtec E-Rate FMF

212 S Main

Grove, OK 74344 U.S.A.

Quantity	Item ID	Description	UOM	Discount	Sell	Total
<b>White Oak ISD 1 Internet Access (10Mbps)</b>						
<b>57 NEOEC / 27 PSO Pole Attachments</b>						
22,100	6-72SMADSSDRK	ADSS Single-Mode 6-72 Strand Single-mode fiber	BOX	\$0.00	\$0.79	\$17,459.00
18	DEAD-END	Dead-End Assembly Thimble, Clevis, Link, and Wraps	EA	\$0.00	\$46.00	\$828.00
69	Tangent	Tangent Fiberlign Aluminum Support Assembly	EA	\$0.00	\$41.00	\$2,829.00
22,100.00	Fiber Installation	Fiber Installation	FT	\$0.00	\$0.70	\$15,470.00
0	TRENCH-CONDUIT	Trenching with conduit Trenching with conduit	FT	\$0.00	\$5.50	\$0.00
0.00	RD-BORE	Road Boring Directional Road Boring	FT	\$0.00	\$15.00	\$0.00
1	Fiber Splice Can	Fiber Splice Can	EA	\$0.00	\$235.00	\$235.00
0	Fiber Standoff	Fiber Standoff H-Bracket holder for can	EA	\$0.00	\$35.95	\$0.00
1	Fiber Coil Bracket	Fiber Coil Bracket H-Bracket with large hooks	EA	\$0.00	\$187.50	\$187.50
1	Fiber Tray	Fiber Tray	EA	\$0.00	\$19.00	\$19.00
5	Downlead Clamp	Downlead Clamp	EA	\$0.00	\$18.00	\$90.00
11	DownGuy	Down Guy & Anchor	EA	\$0.00	\$95.00	\$1,045.00
1	NID	Leviton Fiber NID Single Mode SC DPLX w/tray	EA	\$0.00	\$225.00	\$225.00
8.00	Fusion Splice	Fiber Optic Fusion Splice	EA	\$0.00	\$50.00	\$400.00
1	MISC	Misc Consumables.	EA	\$0.00	\$500.00	\$500.00
8.00	Labor	Labor Cost - On Site	HR	\$0.00	\$80.00	\$640.00
1.00	TRVL	Round Trip Travel Charge	HR	\$0.00	\$160.00	\$160.00
1.00	Project Management	Project Engineering/Management	EA	\$0.00	\$10,500.00	\$10,500.00
1.00	RR	Railroad Permitting	EA	\$0.00	\$5,000.00	\$5,000.00
0.00	Ease	Easement Procurement	EA	\$0.00	\$0.00	\$0.00
600.00	ROW	Right of Way Clearing	EA	\$0.00	\$3.50	\$2,100.00
3.00	30'	Install 30' Pole	EA	\$0.00	\$600.00	\$1,800.00
4.00	MKRDY	Make Ready Adjustments	EA	\$0.00	\$4,200.00	\$16,800.00
1.00	TELCO	Telecommunications Equipment	EA	\$0.00	\$5,000.00	\$5,000.00

**Quote**No.: **3571**

Date: 10/4/2013

Quantity	Item ID	Description	UOM	Discount	Sell	Total
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**Your Price:** **\$81,287.50**

Freight: \$250.00

**SubTotal:** **\$81,537.50****Total:** **\$81,537.50**

Prices are firm until 11/3/2013 Terms:

**Prepared by:** Shane Burgess, sburgess@rectec.net**Date:** 10/4/2013

Thank you for the opportunity to quote on the above items. Quote is valid for 30 days.

**Accepted by:** \_\_\_\_\_**Date:** \_\_\_\_\_





Revision Number: 1 Revision Date: 9/17/2014

**DECLARATIONS**

**FEDERATED RURAL ELECTRIC  
INSURANCE EXCHANGE**

***Railroad Protective Liability Policy***

11875 W. 85th Street - P.O. Box 15147 - Lenexa, KS 66285-5147 - (913) 541-0150 - (800) 356-8360 - Facsimile (913) 541-9004

**Name of Policy Holder**

BNSF RAILWAY  
ANNETTE JENKINS - JONES LANG LASALLE

4300 AMON CARTER BLVD SUITE 100  
FT WORTH, TX 76155

**POLICY NUMBER** 35 RRP 073-14-002

**Total Premium:** \$350

**This policy covers from:**

7/15/2014 to 7/15/2015

12:01 am Standard time at the Address of the Insured State Herein

**Job Location** S28, R19E, T25N, MP 366.93, 500' NE of Intersection Hwy 2 & 69, Craig County, Vinita, OK 74301

**RR Tracking#/Folder#** 14-50189

**Designated Contractor** Northeast Rural Services, Inc. dba RECtec

**Mailing Address** P.O. Box 948  
Vinita, OK 74301-0948

**Name and address of involved governmental authority or other contracting party:**

**Limit of Insurance**

**Each Occurrence Limit** \$2,000,000  
**Aggregate Limit** \$6,000,000

**Description of Operations**

Aerial Crossing

**Endorsements:** RRP1(10/03) RRP87(10/03) RRP98OK(10/03) RRP126(1/08) RRP303(8/06)

In consideration of the premium, insurance is provided for the policy holder described in these declarations, subject to all the terms of this policy including forms and endorsements made a part hereof.

Lenexa, KS

Countersigned At

Countersigned By:

*Cindy Davis*

Authorized Representative

RRP 2(10-03)



JONES LANG  
LASALLE

Jones Lang LaSalle Americas, Inc.  
4300 Amon Carter Blvd., Suite 100  
Fort Worth, Texas 76155  
tel +1 817-230-2600, fax +1 817 306-8265

White Oak

October 10, 2014

Northeast Rural Services, Inc. DBA RECtec  
Attention: Mr. Shane Burgess  
P.O. Box 948  
Vinita, Oklahoma 74301

Tracking no. 14-50189

Dear Mr. Burgess:

Enclosed please find one (1) fully executed Fiber Optic License for Northeast Rural Services, Inc. DBA RECtec. A copy of the executed Agreement must be available upon request at the job site allowing authorization to do the work. Please contact the Roadmaster at (417) 829-2360 or cell phone (417) 773-2661, **at least ten (10) days in advance of entry for each location and BEFORE YOU DIG, CALL 1-800-533-2891.** If you need additional information please contact me at (817) 230-2627.

Sincerely,

Annette Jenkins  
Sr. Manager Permits

Enclosure

cc: James Sadler – BNSF Roadmaster, [james.sadler@bnsf.com](mailto:james.sadler@bnsf.com)



**LICENSE FOR COMMUNICATION LINE, TELEVISION CABLE,  
AND/OR FIBER OPTIC LINE ACROSS OR ALONG RAILWAY PROPERTY**

**THIS LICENSE FOR COMMUNICATION LINE, TELEVISION CABLE AND/OR FIBER OPTIC LINE ("License")** is made to be effective October 10, 2014, (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **NORTHEAST RURAL SERVICES, INC. DBA RECTEC**, an Oklahoma corporation ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

**GENERAL**

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "Drawings and Specifications") a communication line, television cable, and/or a fiber optic line containing a maximum of one (1) conduit(s), together with all conductors and their supporting or containing structures (collectively, the "Communication Line"), across or along Licensor's rail corridor at or near the station of White Oak, County of Craig, State of Oklahoma, Line Segment 1003, Mile Post 366.93 as shown on the attached Drawing No. 60955, dated June 9, 2014, attached hereto as Exhibit "A" and incorporated herein by reference (the "Premises"). Licensee warrants that it has exercised due care in establishing the Drawings and Specifications and has conducted testing and carefully assessed the design process to conclude that the risks associated with using and operating the Communication Line as intended by Licensee will not pose any unreasonable risks to Licensor or to the Premises.
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty (20) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Communication Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

**COMPENSATION**

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand Two Hundred Seventy Eight and No/100 Dollars (\$3278) as compensation for the use of the Premises.
7. **Costs and Expenses.**
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.



7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Communication Line, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

#### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Communication Line) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
  - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
  - 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Communication Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Communication Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Communication Line, or the construction of a new line to replace the Communication Line. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Communication Line promptly upon Licensor's request.



**LICENSEE'S OPERATIONS****11. Construction and Maintenance of the Communication Line.**

- 11.1 Licensee shall notify Licensor's Roadmaster, James Sadler, at telephone (417) 829-2360 or cell phone (417) 773-2661, at least ten (10) business days prior to installation of the Communication Line and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
- 11.4 Any contractors or subcontractors performing work on the Communication Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Communication Line in such a manner and of such material that the Communication Line will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Communication Line shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Communication Line or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Communication Line at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If



ordered at any time to halt construction or maintenance of the Communication Line by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Communication Line, it being solely Licensee's responsibility to ensure that the Communication Line is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section 11, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of Section 8. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

- 11.8 Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles on the Premises, if any, and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
- 11.9 Licensee shall, at its sole cost and expense, construct and at all times maintain the Communication Line in accordance with the National Electric Code. The use of a rail mounted cable plow to install the Communication Line is strictly prohibited unless advance written approval is granted by Licensor, which approval Licensor may grant or withhold in its sole and absolute discretion. Unless otherwise specified, all underground line shall be installed at least forty-eight (48) inches below grade level.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Communication Line by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Communication Line. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Communication Line and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present,



and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

- 12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

12.3.1 filled in to surrounding ground level with compacted bentonite grout; or

12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

### **LIABILITY AND INSURANCE**

13. **Liability and Indemnification.**

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**

13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**

- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE**



ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

- 13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.
- 13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.
15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following Insurance coverage:
- 15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage



- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of Insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional Insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of Insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

- 15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000, and include coverage for, but not limited to the following:
- Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional Insured endorsement in favor of and acceptable to Licensor.
- Separation of Insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

- 15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:
- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
  - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

- 15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Communication Line. **THE CONSTRUCTION OF THE COMMUNICATION LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Communication Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:



- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$460.00.

- ☐ I elect to participate in Licensor's Blanket Policy;
- ☒ I elect not to participate in Licensor's Blanket Policy.

15.5 Other Requirements:

- 15.5.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 15.5.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 15.5.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.5.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.
- 15.5.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.



- 15.5.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.5.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.5.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.5.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.
- 15.5.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.5.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.5.12 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

#### **COMPLIANCE WITH LAWS, REGULATIONS AND ENVIRONMENTAL MATTERS**

##### **16. Compliance with Laws, Rules, and Regulations.**

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance and use of the Communication Line and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "[www.bnsfcontractor.com](http://www.bnsfcontractor.com)" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.



- 16.3 Licensee shall obtain on or before the date It or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "Rights") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Communication Line and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Communication Line in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.
17. Environmental.
- 17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- 17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body on the Premises. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this Section 17.2.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Communication Line which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate,



respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

- 17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

#### **DISCLAIMER OF WARRANTIES**

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE COMMUNICATION LINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.**

#### **LIENS AND TAXES**

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 21 or any other Section of this License.**



22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed by any governmental or quasi-governmental body upon the Communication Line or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "Improvements") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

#### **DEFAULT, TERMINATION, AND SURRENDER**

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.
- 23.5 Licensee agrees not to assert that termination of this License is a discontinuance in service that requires prior approval by the FCC and represents and warrants that it has redundant facilities that would allow it to continue the provision of service after termination of this License.

24. Surrender of the Premises.

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 If so directed by Licensor in writing, remove the Improvements, the Communication Line and all appurtenances thereto, or, at the sole discretion of Licensor, appropriately decommission the Communication Line with a method satisfactory to Licensor;



- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
  - 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Communication Line and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Communication Line and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Communication Line and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Communication Line and the other Improvements to Licensor.

#### **MISCELLANEOUS**

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. **Assignment.**
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such



entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "Purported Assignment") to another party (a "Purported Transferee"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of Section 15 above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.
- 26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.
27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.
- If to Licensor: Jones Lang LaSalle Brokerage, Inc.  
4300 Amon Carter Blvd., Suite 100  
Fort Worth, TX 76155  
Attn: Permits/Licenses
- with a copy to: BNSF Railway Company  
2500 Lou Menk Dr. - AOB3  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate
- If to Licensee: Northeast Rural Services, Inc. DBA RECtec  
P.O. Box 948  
Vinita, Oklahoma 74301
28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Communication Line and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.



29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

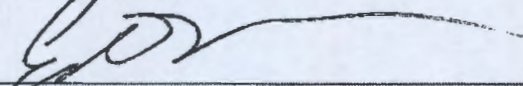
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

**LICENSOR:**

**BNSF RAILWAY COMPANY** a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.,  
4300 Amon Carter Blvd, Suite 100  
Fort Worth, TX 76155

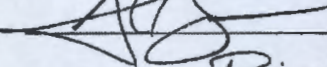
By:   
Ed Darter  
Title: Sr. Vice President - National Accounts

Date: \_\_\_\_\_

**LICENSEE:**

**NORTHEAST RURAL SERVICES, INC. DBA RECTEC** an Oklahoma corporation

By: P.O. Box 948  
Vinita, Oklahoma 74301

By:   
Title: Project Manager

Date: 6/27/14

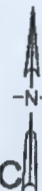


COORDINATE SYSTEM. OK N

TRACKING NO. 14-50189

**EXHIBIT "A"**  
 ATTACHED TO CONTRACT BETWEEN  
**BNSF RAILWAY COMPANY**  
 AND

**NORTHEAST RURAL SERVICES, INC.DBA RECTEC**



SCALE: 1 IN. = 100 FT.  
SPRINGFILED DIV.  
CHEROKEE SUBDIV. L.S. 1003  
 DATE 06/09/2014

SECTION: 28  
 TOWNSHIP: 25N  
 RANGE: 19E  
 MERIDIAN: 1M

MAP REF. 557552



TO: CHEROKEE YARD

TO: SPRINGFIELD YARD

DESCRIPTION OF WIRES OVER TRACK  
 WIRES LOCATED AS SHOWN BOLD

TYPE	NUMBER	VOLTAGE	DISTANCE ABOVE TOP OF RAIL	CLEAR RAILWAY COMPANY'S WIRES
<u>FIBER OPTIC</u>	<u>1</u>	<u>0</u>	<u>24' 6"</u>	<u>-</u>

WHITE OAK  
 COUNTY OF CRAIG

STATE OF OK

JNC

REVISION 1

DRAWING NO. 60955





Date: 4/17/14

APPLICATION FOR WIRE LINE CROSSING OR LONGITUDINAL

Jones Lang LaSalle  
3017 Lou Menk Drive, Suite 100  
Fort Worth, TX 76131-2800  
ATTN: Permit Services

TAX I.D. NO./SS# 73-1336388

We submit for your approval the following specifications for a wire line we propose to build across BNSF RAILWAY COMPANY'S Right-of-way, as shown on enclosed drawing.

Legal name of company/municipality who will own the wireline: Northeast Rural Services, Inc. DBA RECTEC

Is this a condemning Authority? Yes No ☒ IS THE PROJECT ARRA FUNDED? Yes No ☒

State in which Incorporated: OKLAHOMA If not incorporated, please attach name of owners or partners.

Name of contact for ownership entity: Shawn Burgess Telephone: 918-418-9797 Fax:

Correct Mailing Address: PO Box 948 Vinita, OK 74301 Zip Code: 74301

Type of Encroachment: Crossing: ☒ Longitudinal:   
Location of Encroachment: SE 1/4 Section 28 Twsp 25N Range 19E Mile Post  +  
Name of nearest town on Railroad: White Oak County Craig State OK  
Name of nearest roadway crossing: 54340 Width of public road or street: 32 ft  
Within limits of public road or street: Yes ☒ No  If yes, distance from center line of road: 30 ft  
Width of public road or street: 24 ft.

Kind of encroachment: Electric:  Telephone:  Other: Fiber Optic  
No. of wires or cables: 1 Type of wires/cables: Fiber Optic Volts: 0 Phase  Cycles   
No. of conduits:  No. of occupied conduits:  No. of vacant conduits:   
Length of encroachment: 160' Adjacent spans: 109 ft. 162 ft.

Appurtenances on RR Company property: None

Wire clearance over or under top of rail: 24'6" ft

If under track, size and kind of conduit:

Wire clearance over RR Company wire lines:

Was this service requested by BNSF? Yes  No ☒

If yes, by what Railroad representative?

BNSF Contact phone number:

Is applicant a Railroad Shipper? Yes  No ☒

If yes, BNSF Marketing Rep name and number:

Is this installation in conjunction with a track or track expansion project? Yes  No ☒

If yes, BNSF contact name and number:

Is this installation associated with a public road crossing/widening or grade-separation project? Yes  No ☒

If yes, please provide details and plans for said crossing/widening/separation project with your application.

\$600<sup>00</sup> APP Fee  
White Oak  
CDR # 6468

Attached to this sheet is a pole head diagram (if required) and location plan. Location plan shows tie-down measurement to centerline of nearest road crossing, bridge or other railroad structure. Please authorize us to proceed with construction of this encroachment as proposed or advise what changes are necessary to meet your specifications.

I agree that I have read the instructions for installations of wirelines as detailed in the Utility Accommodation Policy.

Signed:  
Print Name:  
Title:  
Telephone:  
Email:

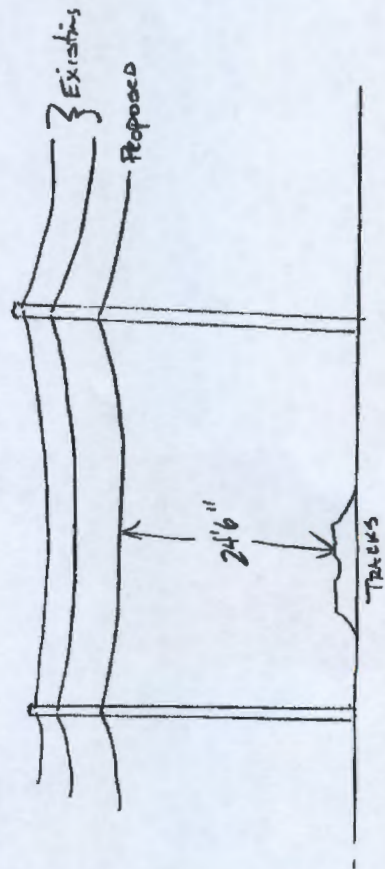
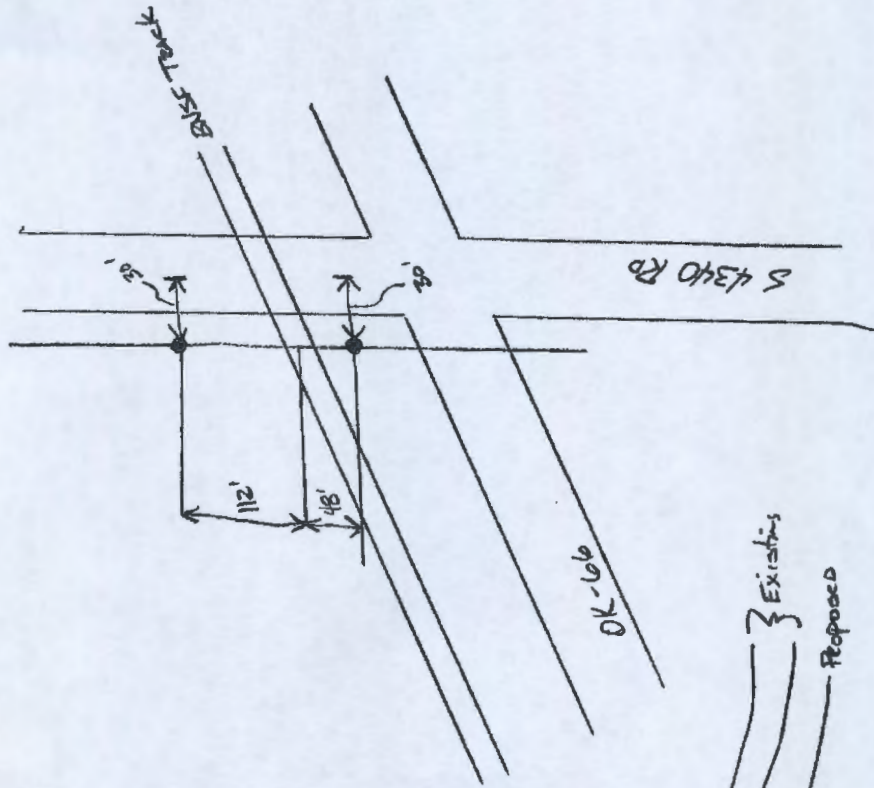
Shawn Burgess  
Project Manager  
918-418-9797 Fax:  
sburgess@rectec.net

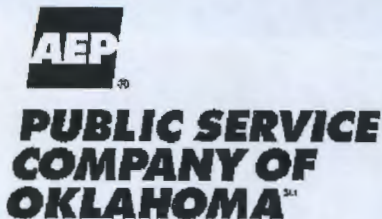
If you would like confirmation of your application, please print your email address:  
sburgess@rectec.net

Wireline 02/10



WHITE OAK CROSSING  
T25N R19E S28 SE





A unit of American Electric Power

White Oak  
CPR # 6468

Monday, June 16, 2014

Northeast Oklahoma Rural Electric Coop. (RECtec)  
Attn.: Shane Burgess  
212 S. Main  
Grove, OK 74344

RE: Permit Number 2014-029-0487      Work Order Number DPS0145946

Dear Mr. Burgess:

The above referenced permit has an estimated make-ready cost to your company of \$287.03. This work was determined to be necessary in order to approve attachment. Drawings and sketches indicating the proposed work are enclosed for review.

If you would like us to proceed, indicate acceptance by signature on the enclosed Permit. Payment must be remitted with the signed permit. These documents will need to be received **July 16, 2014 (no later).**

To ensure accurate processing of the payment, include the Permit and Work Order Number on all checks and responses. Should your company decide not to accept this design and associated make-ready cost, contact me at 918-599-2188. Otherwise mail the required documents addressed as follows:

**AEP-PSO  
Attn: April Westemeir  
212 E 6<sup>th</sup> St, GO-3<sup>rd</sup> floor  
Tulsa, Ok 74119**

If these documents are not received within the time stated, this Permit will be cancelled. In the event, you should decide to pursue attachments to these poles after the elapsed time, submittal of a new Permit will be required. If you should have any questions regarding this make-ready work, please contact Greg Baker at # (918) 599-2501.

Respectfully,

A handwritten signature in black ink, appearing to read "R. Hardman".  
Renee Hardman

Enclosures



# TECHSERV

Consulting & Training, LTD.

Engineering ■ Consulting ■ Training ■ Inspections ■ Project Management ■ Joint Use

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3320 SSW Loop 323 ■ Tyler, Texas 75701 ■ 903-509-8183 ■ 800-903-8183 ■ Fax: 903-509-8185 ■ [www.tsct.org](http://www.tsct.org)

Please sign/initial and date the permit  
at the notation flags  
and return the  
ORIGINAL PERMIT to

Pat Wingate  
TechServ Consulting & Training, Ltd.  
212 E. 6<sup>th</sup> Street, GO-3NE  
Tulsa, OK 74119

Please mail payment with invoice to

AEP/PSO  
Attn: Renee Hardman  
212 E. 6<sup>th</sup> Street, GO-3NE  
Tulsa, OK 74119



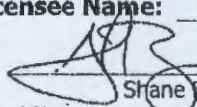
Permit Application Form  
Application, Conditions and Permit

Vinita,  
White Oak

Public Service Company of Oklahoma  
**To:** Attn: Distribution Technical Support -Attn: Renee Hardman  
212 E. 6<sup>th</sup> Street  
Tulsa, OK 74119-1295

2014-029-0487

**This Permit and Application is submitted pursuant to the terms of our Pole Attachment Agreement and is governed by the provisions of that Agreement for the poles as shown on the attached sketch. Included with this is completed structural and interference studies, if applicable, and Plans and Specifications relating to such application. Including a list of contractors and subcontractors proposed for use of such Attachment.**

<b>PART I</b>	<i>Licensee to check appropriate boxes, fill in blanks, date and sign</i>
<input checked="" type="checkbox"/>	<b>New Attachment of Equipment on Distribution Poles</b> <i>pw</i> Licensee desires to make <u>1</u> new attachment(s) on <u>25</u> Pole(s). The attached drawing(s) and specifications identify each new Pole on which Equipment is to be attached and the types and characteristics of the Equipment or other facilities to be attached to the Pole(s). After such attachment, the Equipment on each Pole will be used in connection with the provision of Licensee's Service.
<input type="checkbox"/>	<b>Replacement, Relocation, Overlashing or Modification of Equipment</b> Licensee desires to replace, relocate, overlash or modify _____ existing attachments on _____ Poles(s) which already have existing attachments. The attached drawing(s) and specifications identify each Pole on which the Equipment is to be replaced, relocated, overlash or modified and describes the types and characteristics of the Equipment involved in the replacement, relocation, overlashing or modification. After such replacement, relocation, overlashing or modification, the Equipment on each Pole will be used in connection with the provision of Licensee's Service.
<input type="checkbox"/>	<b>Removal of Equipment from Poles</b> Licensee has removed the _____ pieces of Equipment from _____ Pole(s). The attached drawing(s) identifies each Pole from which Equipment was removed and the type of Equipment removed. After such removal, the remaining Equipment on each Pole will be used in connection with the Provision of Licensee's Service.
Northeast Rural Services, Inc. dba RECtec	
Licensee Name: <u>Northeast Oklahoma Electric Coop</u>	
By: <u></u>	Date: _____
Printed Name: <u>Shane Burgess</u>	Telephone: <u>918-418-9797</u>
Title: <u>Project Manager</u>	Facsimile: <u>918-256-9380</u>



Permit Application Form  
Application, Conditions and Permit

2014-029-0487

<b>PART II</b>	<i>PSO to check appropriate boxes, fill in blanks, date and sign</i>
<b>Licensee's application to attach, replace, relocate or modify Equipment is</b> <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> Conditionally approved	
In order to provide space on PSO's pole(s) it is necessary to make the following change(s): <u>3</u> . The estimated cost of completing this work, in accordance with Work Order number <u>DPSON145946</u> , is \$ <u>287.03</u> . If this meets with your approval, please indicate your acceptance in the space provided. After receipt of your acceptance and payment of the estimated costs we will proceed to make such changes.	
<b>PUBLIC SERVICE COMPANY OF OKLAHOMA</b>	
By: <u><i>Greg Barker</i></u>	Date: <u>6-16-14</u>
Printed Name: <u>Greg Barker</u>	Telephone: <u>918-599-2501</u>
Title: _____	Facsimile: <u>918-599-3244</u>

<b>PART III</b>	<i>Licensee to sign, date and return original</i>
Licensee hereby accepts the modifications and conditions set forth in Part II hereof and any pertinent attachment hereto.	
Licensee Name: <u>Northwest Rural Services Inc. DBA RECTO</u>	
By: <u><i>Shane Burgess</i></u>	Date: <u>6/18/14</u>
Printed Name: <u>Shane Burgess</u>	Telephone: <u>918-418-9797</u>
Title: <u>Project Manager</u>	Facsimile: <u>918-256-9380</u>

Licensee Ref # _____	PERMIT # _____
Licensee Map # _____	AEP MAP # _____
	DATE: _____

**COMMUNICATIONS RECOMMENDATIONS**  
**PERMIT NO. 2014-029-0487**

Northeast Rural Services, Inc. # Vinita

All beginning, ending, and angle poles need to be guyed and anchored.

C=Conflict OK=ok to attch O=Other	New or Overlsh/ MOD	Existing Violation	Pole Station (POLE LOCATION #)	Company	Communications Recommendations
OK	NEW		001 (5734951831 7761)	NORTHEAST RURAL SERVICES	ATTACH AT 21'0" (3'5" BELOW EXISTING TOP OF CONDUIT) INSTALL OWN DOWN GUY AND ANCHOR
OK	NEW		002 (5734955831 7642)	NORTHEAST RURAL SERVICES	ATTACH AT 21'9" (40" BELOW EXISTING OPEN WIRE SECONDARY)
OK	NEW		003 (5734962831 7516) 102	NORTHEAST RURAL SERVICES	ATTACH AT 18'10" (40" BELOW EXISTING TRIPLEX, POINT OF ATTACHMENT)
OK	NEW		004 (5734974831 7408) 2519289954	NORTHEAST RURAL SERVICES	ATTACH AT 28'3" (40" BELOW EXISTING CROSS ARM POINT OF ATTACHMENT)
C-1	NEW		005 (5734972831 7241) 2519289956	NORTHEAST RURAL SERVICES	ATTACH AT 28'0" (40" BELOW EXISTING TRIPLEX POINT OF ATTACHMENT) AFTER PSO WORK COMPLETE
				<b>PSO</b>	RAISE SERVICE LEADS 9" TO 31'4"
C-1	NEW		006 (5734982831 7095)	NORTHEAST RURAL SERVICES	ATTACH AT 29'9" (40" BELOW EXISTING NEUTRAL POINT OF ATTACHMENT)
				<b>PSO</b>	REMOVE IDLE DUPLEX AND 1 POINT RACK
C-1	NEW		007 (5734980831 6921) 2519289939	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (6'8" BELOW NEW TRIPLEX POINT OF ATTACHMENT) AFTER PSO WORK COMPLETE
				<b>PSO</b>	RAISE WEST TRIPLEX 4'10" TO 26'8"
OK	NEW		008 (5734992831 6678) 2519289934	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (7'10" BELOW EXISTING TRIPLEX POINT OF ATTACHMENT)
OK	NEW		009 (5735008831 6343) 2519289929	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (6'8" BELOW EXISTING TRIPLEX POINT OF ATTACHMENT)
OK	NEW		010 (5735021831 6056) 2519289924	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (6'10" BELOW EXISTING TRIPLEX POINT OF ATTACHMENT)
OK	NEW		011 (5735040831 5751)	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (3'6" BELOW EXISTING NEUTRAL POINT OF ATTACHMENT)



**COMMUNICATIONS RECOMMENDATIONS**  
**PERMIT NO. 2014-029-0487**

**Northeast Rural Services, Inc. # Vinita**

All beginning, ending, and angle poles need to be guyed and anchored.

C=Conflict OK=ok to attach O=Other	New or Overlap/ MOD	Existing Violation	Pole Station (POLE LOCATION #)	Company	Communications Recommendations
OK	NEW		012 (5735055831 5453) 2519289913	NORTHEAST RURAL SERVICES	ATTACH AT 19'3" (40" BELOW EXISTING NEUTRAL/TRIPLEX POINT OF ATTACHMENT)
OK	NEW		013 (5735065831 5132)	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (5'4" BELOW EXISTING NEUTRAL POINT OF ATTACHMENT)
OK	NEW		014 (5735082831 4800) 2519289910	NORTHEAST RURAL SERVICES	ATTACH AT 18'3" (40" BELOW EXISTING NEUTRAL/TRIPLEX POINT OF ATTACHMENT)
OK	NEW		015 (5735086831 4708)	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (5'0" BELOW EXISTING NEUTRAL POINT OF ATTACHMENT)
OK	NEW		016 (5735095831 4522) 9996	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (9'0" BELOW EXISTING CROSS ARM POINT OF ATTACHMENT)
OK	NEW		017 (5735106831 4205)	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (3'10" BELOW EXISTING CROSS ARM POINT OF ATTACHMENT)
OK	NEW		018 (5735116831 3902)	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (4'1" BELOW EXISTING CROSS ARM POINT OF ATTACHMENT)
OK	NEW		019 (5735125831 3591)	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (4'2" BELOW EXISTING CROSS ARM POINT OF ATTACHMENT)
				<b>PSO</b>	<b>MAINTENANCE: CHANGE OUT SPLIT CROSS ARM REMOVE IDLE HARDWARE NOTE: GREG HAIRE CONTACTED 5/27/14</b>
OK	NEW		020 (5735143831 3322)	NORTHEAST RURAL SERVICES	ATTACH AT 20'0" (3'8" BELOW EXISTING NEUTRAL/TRIPLEX POINT OF ATTACHMENT)
OK	NEW		021 (5735150831 3011)	NORTHEAST RURAL SERVICES	ATTACH AT 19'7" (40" BELOW EXISTING NEUTRAL POINT OF ATTACHMENT)
OK	NEW		022 (5735160831 2879)	NORTHEAST RURAL SERVICES EAST	ATTACH AT 20'0" (3'5" BELOW EXISTING NEUTRAL POINT OF ATTACHMENT) SLACK TO POLE STATION 023
				NORTHEAST RURAL SERVICES NORTH	ATTACH AT 19'8" (3'9" BELOW EXISTING NEUTRAL POINT OF ATTACHMENT) INSTALL OWN DOWN GUY AND ANCHOR







AEP-PSO  
Please remit to: April Westameir  
212 E 6th St, GO-3rd Floor  
Tulsa, Ok 74119

INVOICE NO.: 2014-029-0487  
INCLUDE COPY OF INVOICE WITH CHECK  
Workrequest #53932128

Date: 6/16/2014  
Monday

QUOTE #238348  
Cust # Get from Renee

Northeast Rural Service  
Attn: Shane Burgess  
212 S. Main  
Grove, OK 74344

E. Hwy 66th & S 4340 Road  
Vinita, OK

To bill you for the following: Make- Ready Estimate  
Tulsa, OK

CENTER	ACCOUNT	WORK ORDER #	BUDGET SCH #	PERMIT #	AMOUNT
12714	1860092	DPS0145946	EDN100087	2014-029-0487	\$287.03

INVOICE TOTAL

\$287.03

Please remit to the above address

Payment Due July 16, 2014





## PAYMENT AUTHORIZATION

887

DATE: 4/17/2014

TO: Jones Lang LaSalle

BNSF

ADDRESS: Attn: Permit Services

3017 Lou Menk Drive, Suite 100

Fort Worth, TX 76131-2800

**PAID**  
APR 23 2014

Qty	DESCRIPTION	Code	Rate	Amount
1	BNSF Permit request for White Oak School CPR# 6468	6..1700.1414 300		\$600.00
	<b>TOTAL</b>			\$600.00

Approval for Payment: \_\_\_\_\_

Send Check to: Shelly Allensworth  
Vinita Office

OKSA  
4/18/14

Northeast Rural Services, Inc.  
POST OFFICE BOX 399  
VINITA, OKLAHOMA 74301-0399

PLEASE DETACH AND RETAIN

No. 55668

Date: 04/23/2014

DATE	INVOICE	DESCRIPTION	GL ACCOUNT	ACTV	AMOUNT
04/17/2014	04172014	PREMIT REQUEST FOR WHITE OAK SCHOOL	61700.0	300	600.00
Vendor: 887 BNSF RAILWAY					Totals: 600.00

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND WATERMARK/LINES ON THE BACK - HOLD AT ANGLE TO VIEW

Northeast Rural Services, Inc.

POST OFFICE BOX 399  
VINITA, OKLAHOMA 74301-0399

General Fund

No. 55668

86-111/1031

FIRST NATIONAL BANK AND TRUST  
VINITA, OKLAHOMA 74301

SIX HUNDRED AND NO / 100\*\*\*\*\*

PAY TO THE ORDER OF  
BNSF RAILWAY  
ATT PERMIT SERVICES  
3017 LOU MENK DRIVE  
SUITE 100  
FORT WORTH TX 76131 -2800

DATE	CHECK NO	AMOUNT
04/23/2014	55668	\$*****600.00

Connie Porter

Janice Hargrove

887

SIGNATURE HAS A COLORED BACKGROUND • BORDER CONTAINS MICROPRINTING

⑈55668⑈ ⑆103101110⑆ 2329782⑈



6/18 gave to Jennifer (will be cut week of 6/23)

7/1 rec'd check #56237



Technology & Communications

## PAYMENT AUTHORIZATION

DATE: 6/18/2014

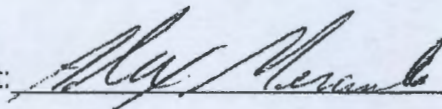
TO: AEP-PSO

ADDRESS: Attn: April Westemeir

212 E. 6th St, GO-3rd Floor

Tulsa, OK 74119

Qty	DESCRIPTION	Code	Rate	Amount
1	Make Ready Estimate for White Oak	6..1700.300		\$287.03
	Public School CPR#6468			
	Work Order# DPS0145946			
	Permit Number: 2014-029-0487			
	<b>TOTAL</b>			<b>\$287.03</b>

Approval for Payment: 

Send check to: Shelly Allensworth



STATE OF OKLAHOMA  
CRAIG COUNTY  
APPLICATION FOR PERMIT  
PUBLIC SERVICE/PIPELINE CROSSING

Before placing pipeline, telephone company, or utility company underground crossing facility on any county right-of-way, a permit must be obtained, using standard forms furnished by the county. All information requested on this form must be supplied.

Print:

Company Name: Northeast Rural Services, Inc. DBA RECTec

Personal Contact: Shane Burgess

Mailing address: PO Box 948

City: Vinita State OK Zip 74301

Type of Installation

Electric ☐ Gas ☐ Oil ☐ Sewer ☐ Telephone ☐ Water ☐

Other Fiber Optic

A permit to erect, construct, and maintain a Fiber Optic along, upon, or across the hereinafter said county highways or road(s) for the purpose of transporting, selling, and using Data to White Oak School and further described as follows:

LOCATION:

To Cross-hw parallel <sup>700'</sup> roadway approximately 1200' feet N  
(Cross or Parallel) (N,E,S,W)  
from the SW corner of Section 34, Township 25N, Range 19E.

The installation will be made in the following manner:

(Boring, pushing and other description)

Size of line 0.49" Size of casing 1 1/4"



4. When paralleling the roadway, utility lines shall be located within five (5) feet of the right-of-way line or the fence line, unless otherwise agreed to by BOCC. If no fence exists, the location of the right-of-way line shall be determined by this Applicant. In no instance shall a utility line be placed within the limits of the roadbed, unless otherwise agreed to by BOCC.

5. All underground paralleling facilities shall be installed at a minimum of thirty (30) inches below the surface, except buried power lines which should be placed at a minimum depth of forty-eight (48) inches below the surface, and except telephone company facilities, which shall be installed at a minimum of twenty-four (24) inches below the surface. All overhead and parallel installations shall not cross any county road nor any point of access to the county road at a height of less than required by the Corporation Commission of the State of Oklahoma.

6. All underground crossings shall be installed at a minimum of three (3) feet below the elevation of the centerline of the road or two (2) feet below the elevation of the ditch, whichever is greater. High pressure pipeline crossings shall be installed at a minimum of four (4) feet below the elevation of the ditch. High pressure pipelines are defined as pipelines designed to operate at pressures in excess of one hundred, twenty-five (125) PSIG.

7. All Section and Quarter Section Corners markers shall be protected. No pipeline shall cross on intersection diagonally.

8. The Applicant agrees to keep the road open to traffic unless otherwise agreed to or approved by the BOCC. The Applicant or contractor shall meet all applicable laws and regulations, including those in the "Manual on Uniform Traffic Control Devices" appropriate for the construction project covered by this Application.

9. The Applicant will relocate said utility or pipeline, if and when it interferes with highway construction or maintenance, upon written from the BOCC.

10. Applicant agrees to design pipeline road crossings using one of the following methods:

A. If encased, casing shall extend from right-of-way to right-of-way.

B. If non-cased, and of steel, pipe within the right-of-way shall be superior to the pipe outside the right-of-way:

1. By being at least one grade better and of the same thickness, or;
2. Being a minimum of one wall thickness greater and of the same alloy, or;
3. In the case of unequal diameters, being proven superior by use of the pipe design formula as per 49 CFR Part 192.105.



C. If non-cased, and of plastic, pipe within the right-of-way shall be installed:

1. At a minimum depth of four (4) feet below the elevation of the ditch;  
or
2. If buried with less than four (4) feet of cover, approval prior to construction must be obtained from the BOCC.
3. When crossing a road, high pressure pipelines will be covered by a concrete slab.

11. Applicant agrees to hold free and blameless this County for any damage to person or property caused by its construction or maintenance of any poles, posts, studs, pipes, valves, wires and other property placed on or under said highway, pursuant to this application. Applicant further agrees to be responsible for repairing all damages to the roadway caused by applicant's construction. This responsibility includes, when and where appropriate, Applicant causing to be placed on the roadway sufficient gravel and/or chat which will return the roadway where the cut or installation of facilities occurred to a level surface, designed such that, after compacting, no depressions in the roadway will result from Applicant's installation.

12. Applicant assures that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Amendments of 1972. 33 U.S.C. § 1251, et. Seq.

13. Special Requests:

ATTESTED:



[Signature]

BOARD OF COUNTY COMMISSIONERS

[Signature]  
Chairman

[Signature]  
Member

[Signature]  
Member

APPROVED/DISAPPROVED on this the 12 day of May, 2014

APPROVED/DISAPPROVED [Signature] Date: 5-12-14  
(COUNTY COMMISSIONER)

COUNTY COMMISSIONERS DISTRICT NUMBER 1

LOCATION/REMARKS \_\_\_\_\_



## PIPELINES

## ELECTRIC

Size \_\_\_\_\_ Voltage \_\_\_\_\_  
Alloy/Material \_\_\_\_\_ Conductor Type \_\_\_\_\_  
Contents \_\_\_\_\_ Type of Structure \_\_\_\_\_  
Normal Working Pressure \_\_\_\_\_

## TELEPHONE

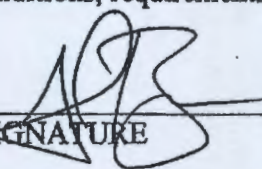
Wires/Pairs 72 strand  
Gauge 249  
Cable Type ADSS

I hereby attest to the accuracy of the information contained on this application. Further, agreement is made to comply with the conditions, requirements, and covenants listed on the remainder of this form.

DATE

4/30/14

SIGNATURE



.....

**IF GRANTED, THIS PERMIT IS SUBJECT TO THE FOLLOWING  
CONDITIONS, REQUIREMENTS, AND COVENANTS, TO WIT:**

1. Applications for road crossings must be submitted to the COUNTY CLERK for approval by the Board of County Commissioners (BOCC) with a payment of \$ — 0 — per crossing for an inspection fee made payable to the COUNTY TREASURER'S OFFICE. All telephone companies and public utility companies shall be exempt from the inspection fee. Applicant/Contractor shall telephone County Highway or County Commissioners Office twenty-four (24) hours prior to actual construction if required by BOCC, so an inspector can be at the site during construction. Applicant/Contractor shall have the right to maintain its facilities upon reasonable notice to the BOCC or a designee.

2. Blasting is not permitted within the highway right-of-way, except in unusual circumstances, and only with special, prior approval from the County Engineer.

3. Underground construction or pipelines, telephone company facilities, or utility lines (hereinafter collectively referred to as utility lines) that cross county highways shall be bored, and NO DITCH OR TRENCH in the road shall be opened by the Applicant/Contractor, unless otherwise agreed to, in writing, by BOCC.



**STATE OF OKLAHOMA  
CRAIG COUNTY  
APPLICATION FOR PERMIT  
PUBLIC SERVICE/PIPELINE CROSSING**

Before placing pipeline, telephone company, or utility company underground crossing facility on any county right-of-way, a permit must be obtained, using standard forms furnished by the county. All information requested on this form must be supplied.

Print:

Company Name: Northeast Rural Services, Inc. DBA RECTEC

Personal Contact: Shane Burgess

Mailing address: PO Box 948

City: VINITA State OK Zip 74301

Type of Installation

Electric \_\_\_\_\_ Gas \_\_\_\_\_ Oil \_\_\_\_\_ Sewer \_\_\_\_\_ Telephone \_\_\_\_\_ Water \_\_\_\_\_

Other Fiber Optic

A permit to erect, construct, and maintain a Fiber Optic line along, upon, or across the hereinafter said county highways or road(s) for the purpose of transporting, selling, and using Data to White Oak School and further described as follows:

**LOCATION:**

To Cross roadway approximately 50' feet East  
(Cross or Parallel) (N.E.S.W.)  
from the NW corner of Section 4, Township 24N, Range 19E.

The installation will be made in the following manner:

(Boring, pushing and other description)

Size of line 0.49" Size of casing 1 1/4" poly

4. When paralleling the roadway, utility lines shall be located within five (5) feet of the right-of-way line or the fence line, unless otherwise agreed to by BOCC. If no fence exists, the location of the right-of-way line shall be determined by this Applicant. In no instance shall a utility line be placed within the limits of the roadbed, unless otherwise agreed to by BOCC.

5. All underground paralleling facilities shall be installed at a minimum of thirty (30) inches below the surface, except buried power lines which should be placed at a minimum depth of forty-eight (48) inches below the surface, and except telephone company facilities, which shall be installed at a minimum of twenty-four (24) inches below the surface. All overhead and parallel installations shall not cross any county road nor any point of access to the county road at a height of less than required by the Corporation Commission of the State of Oklahoma.

6. All underground crossings shall be installed at a minimum of three (3) feet below the elevation of the centerline of the road or two (2) feet below the elevation of the ditch, whichever is greater. High pressure pipeline crossings shall be installed at a minimum of four (4) feet below the elevation of the ditch. High pressure pipelines are defined as pipelines designed to operate at pressures in excess of one hundred, twenty-five (125) PSIG.

7. All Section and Quarter Section Corners markers shall be protected. No pipeline shall cross on intersection diagonally.

8. The Applicant agrees to keep the road open to traffic unless otherwise agreed to or approved by the BOCC. The Applicant or contractor shall meet all applicable laws and regulations, including those in the "Manual on Uniform Traffic Control Devices" appropriate for the construction project covered by this Application.

9. The Applicant will relocate said utility or pipeline, if and when it interferes with highway construction or maintenance, upon written from the BOCC.

10. Applicant agrees to design pipeline road crossings using one of the following methods:

A. If encased, casing shall extend from right-of-way to right-of-way.

B. If non-cased, and of steel, pipe within the right-of-way shall be superior to the pipe outside the right-of-way:

1. By being at least one grade better and of the same thickness, or;
2. Being a minimum of one wall thickness greater and of the same alloy, or;
3. In the case of unequal diameters, being proven superior by use of the pipe design formula as per 49 CFR Part 192.105.



## PIPELINES

## ELECTRIC

Size \_\_\_\_\_ Voltage \_\_\_\_\_  
Alloy/Material \_\_\_\_\_ Conductor Type \_\_\_\_\_  
Contents \_\_\_\_\_ Type of Structure \_\_\_\_\_  
Normal Working Pressure \_\_\_\_\_

## TELEPHONE

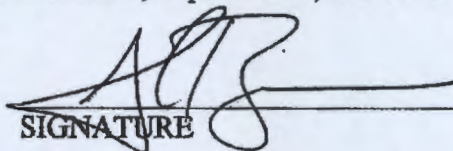
Wires/Pairs 12 strands  
Gauge 0.49"  
Cable Type ADSS

I hereby attest to the accuracy of the information contained on this application. Further, agreement is made to comply with the conditions, requirements, and covenants listed on the remainder of this form.

DATE

4/30/2014

SIGNATURE



.....

**IF GRANTED, THIS PERMIT IS SUBJECT TO THE FOLLOWING  
CONDITIONS, REQUIREMENTS, AND COVENANTS, TO WIT:**

1. Applications for road crossings must be submitted to the COUNTY CLERK for approval by the Board of County Commissioners (BOCC) with a payment of \$ 0 per crossing for an inspection fee made payable to the COUNTY TREASURER'S OFFICE. All telephone companies and public utility companies shall be exempt from the inspection fee. Applicant/Contractor shall telephone County Highway or County Commissioners Office twenty-four (24) hours prior to actual construction if required by BOCC, so an inspector can be at the site during construction. Applicant/Contractor shall have the right to maintain its facilities upon reasonable notice to the BOCC or a designee.

2. Blasting is not permitted within the highway right-of-way, except in unusual circumstances, and only with special, prior approval from the County Engineer.

3. Underground construction or pipelines, telephone company facilities, or utility lines (hereinafter collectively referred to as utility lines) that cross county highways shall be bored, and NO DITCH OR TRENCH in the road shall be opened by the Applicant/Contractor, unless otherwise agreed to, in writing, by BOCC.

C. If non-cased, and of plastic, pipe within the right-of-way shall be installed:

1. At a minimum depth of four (4) feet below the elevation of the ditch;  
or
2. If buried with less than four (4) feet of cover, approval prior to construction must be obtained from the BOCC.
3. When crossing a road, high pressure pipelines will be covered by a concrete slab.

11. Applicant agrees to hold free and blameless this County for any damage to person or property caused by its construction or maintenance of any poles, posts, studs, pipes, valves, wires and other property placed on or under said highway, pursuant to this application. Applicant further agrees to be responsible for repairing all damages to the roadway caused by applicant's construction. This responsibility includes, when and where appropriate, Applicant causing to be placed on the roadway sufficient gravel and/or chat which will return the roadway where the cut or installation of facilities occurred to a level surface, designed such that, after compacting, no depressions in the roadway will result from Applicant's installation.

12. Applicant assures that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Amendments of 1972. 33 U.S.C. § 1251, et. Seq.

13. Special Requests:



ATTESTED:

*James Malone*

BOARD OF COUNTY COMMISSIONERS

*Roy Bick*

Chairman

*H. A. Gordon*

Member

*Dan [unclear]*

Member

APPROVED/DISAPPROVED on this the 12 day of May, 2014

APPROVED/DISAPPROVED

*Chad*  
(COUNTY COMMISSIONER)

Date: 5-12-14

COUNTY COMMISSIONERS DISTRICT NUMBER 1

LOCATION/REMARKS \_\_\_\_\_



WHITE OAK



OKLAHOMA DEPARTMENT OF  
TRANSPORTATION

DIVISION VIII

4002 North Mingo Valley Expressway  
Tulsa, OK 74116

(918) 838-9933

Fax: (918) 832-9074

5-13-14

NORTHEAST RURAL SERVICES, INC.  
ATTN: SHANE BURGESS  
P.O. Box 948  
VINITA OK 74301

We are enclosing your approved Utility Permit No. 18-529 to cross/parallel SH-66 in  
Craig County.

It is required that you utilize all the necessary safety precautions available to advise the traveling public of your work within the highway right-of-way. This will include six "CONSTRUCTION AHEAD" signs, three for each direction of traffic, spaced 500 feet apart, starting at the work site. Additional safety requirements deemed necessary by you or our County Superintendent will also be required. Refer to paragraph No. 6 of the approved permit.

At the risk of being asked to stop work - it is necessary to have a completed copy of the approved permit at the job site at all times, and just as important to contact our County Maintenance Headquarters prior to beginning work on highway right-of-way.

Our County Superintendent is:

Terry Langley  
(918) 256-3314 - Office  
(918) 607-4467 - Mobile  
Vinita, Oklahoma

*Randle White*  
Randle White, P.E.  
Division Engineer  
*ry sw*  
CB/sw

c: Utilities Branch, Right-of-Way Division  
County Maintenance Superintendent  
Division File

"The mission of the Oklahoma Department of Transportation is to provide a safe, economical and efficient transportation network for the people, commerce and communities of Oklahoma."

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF OKLAHOMA  
DEPARTMENT OF TRANSPORTATION  
UTILITY PERMIT FOR FEDERAL OR STATE HIGHWAYS

HIGHWAY DIVISION 8  
COUNTY CRAIG  
PERMIT NO. 18-529

This Authority executed in the original and four copies this 16 day of April, 20 14, by the Oklahoma Department of Transportation, acting for and on behalf of the State of Oklahoma, hereinafter called the DEPARTMENT, Witnesseth:

That the Department does by these presents, grant to:

Utility Owner / Applicant Northeast Rural Services, Inc DBA Ricker Attention: Shane Burgess  
Mailing Address PO Box 948 City Unita State OK Zip 74301  
Telephone No. 918-418-9797

A permit to erect, construct and maintain a Fiber Optic line along, upon and across the hereinafter said highway(s) for the purpose of transporting, selling and using DATA and shown on the attached drawing(s) and further described as follows:

LOCATION:

To Cross U.S. 66 S.H. 25 Approximately 2.5 miles  
(Cross and/or Parallel) West of US 60 & US 66  
(N.S.E.W.) (Nearest other Highway Junction)

and further described as: 6100 feet SW of the NE corner  
(N.S.E.W.)

Corner of Section 27 Township 25N Range 19E  
County CRAIG Size of line 0.49" Size of casing \_\_\_\_\_

The installation will be made in the following manner: Underbuild Existing PSD Electric Distribution Line.

(Boring, pushing, overhead crossings, and other descriptions)

All information requested on the form must be supplied. Drawings clearly illustrating work to be performed within the highway right-of-way and all other utility facilities in the area of this permit should be provided with the permit application. A plan view will be sufficient, except where a crossing of this highway is involved. Each highway crossing must be represented by an actual profile and cross-section view, regardless of the type of facility being installed. All installations must be in compliance with the Department's clear zone policy. The owner must self certify that the facility is located in the corridor approved by the Division Engineer.

This permit is granted subject to the following conditions, requirements, and covenants, to wit:

1. Work to be performed on the Department right-of-way must have the approval of the Department's Division Engineer, who must be notified when the work is to begin and when it is complete for final inspection. Under no circumstances will any work be done on Department right-of-way until approval has been obtained. No work will be done on Department right-of-way on Saturdays, Sundays, Holidays or after dark unless approved by the Division Engineer. The Division Engineer may require a pre-construction conference.
2. One copy of the approved permit must be kept at the work site for inspection by the Division Engineer or his representatives. Applicant is to have an inspector or engineer present at all times during construction to insure that installation is made in accordance with plans and specifications approved by the Department. No deviation from the approved plans and specifications will be made without the approval of the Department's Division Engineer.



3. The applicant must agree to hold the State harmless for any damage or injury to persons or property caused by or resulting from the construction, maintenance, operation, or repair of the facilities on, under, or over the Department right-of-way, and must further agree to reimburse the Department for repair of any damage to Department facilities caused by the construction, maintenance and/or operation of the facility. The applicant will be responsible for any damage resulting from deviation of the assigned corridor.
4. No driveways, local roads, county roads, ditch liners, structures or surfaced areas will be cut unless approved by the Division Engineer.
5. All work on the Department right-of-way is to be done in accordance with the current "Standard Specification for Highway Construction", which is incorporated herein by reference as if fully set out. At the conclusion of such work, the right-of-way must be cleaned up and left in a presentable condition. Cleanup will include replacing any protective grass cover destroyed by trenching or the operation of any equipment, and correcting any other damage that may have been caused, as directed by the Division Engineer.
6. The applicant must furnish all flagmen, lights, barricades, and warning signs deemed necessary by the Department during the construction, maintenance, or repair of the applicant's facilities on the Department's right-of-way, as required by Department standards and the "Manual on Uniform Traffic Control Devices".
7. In some cases, the applicant must post a performance bond in an amount determined by the Division Engineer. Necessity for such bond will be determined by the Division Engineer and the bond will be held in his office until the right-of-way is in a presentable condition.
8. When notified to do so by the Department, the applicant agrees to make all changes in the facilities on Department right-of-way within the Department's established time period at the applicant's own expense, unless otherwise provided by law or order of the Transportation Commission.
9. Aerial Facilities - Clearance above the traffic lanes of the highway at all aerial pole line crossings should comply with applicable safety codes, and will not be less than 20 feet. All poles, posts, stubs, fixtures, down guys, wires, and other appurtenances must be kept in good repair at all times and free from weeds and brush within a 5-foot area of the installation. These facilities, when parallel to the highway, will be installed within their assigned corridor and outside the clear zone, unless otherwise approved by the Division Engineer. Parallel overhead lines on all highway right-of-way should be limited to single pole construction. All crossing should be as nearly perpendicular as possible. Any deviation must be approved by the Division Engineer.
10. Underground facilities - All encased crossings should have casing from right-of-way line to right-of-way line and be sealed at both ends with an approved conduit seal (standard neoprene, rubber and comparable seals will be approved) and vented outside the right-of-way lines, unless otherwise approved by the Division Engineer. The top of the conduit should be a minimum of 60 inches below the top of pavement, but not less than 30 inches below the bottom of the ditches. The casing must be designed to sustain roadway loadings, contain and divert from the roadway the contents of the carrier pipe, and have a life expectancy equal to or greater than the carrier pipe. The vents should be sized to allow proper release of carrier pipe contents in case of failure. The minimum pipe size for vents is 2 inch nominal, and the vent must extend a minimum of 36 inches above natural ground level. The utility owner must install identification markers at each right-of-way line directly above the facility. The markers may be attached to vents or to a right-of-way fence, and should be placed over parallel underground facilities at each change in direction and not more than 1000 foot intervals. The markers may be in the utility owner's standard design, but must identify the owner's name, address and telephone number and emergency contact number, size of facility, and must be at least 130 sq. inches in area. They must also be erected at a location plainly visible from within the highway right-of-way.

All underground electric cable crossings must be placed in a conduit and be a minimum of 48 inches below the ditch flow lines. Conduit placed beneath a roadway must be steel, HDPE, Heavy Duty PVC or fiberglass if it is designed to withstand highway loading and is properly protected. Encasement for underground power lines, or similar facilities should comply with the above, except for the installation of vents, and seals, and the ability to contain and divert. Methods for boring the roadway shall be the same as for any other bored crossing. Encasement for underground communication cables is not required.

Steel pipelines crossing the right-of-way may be installed without encasement if the installation is in accordance with R/W Form 311 "Special Provisions for the Installation of Underground Steel Pipelines Crossing State or Federal Rights-of-Way Without the Use of Conduit". This Special Provision stipulates in part that carrier pipe material within the right-of-way must be superior to the carrier pipe material outside the right-of-way by being of steel at least one grade better and of the same wall thickness, or a minimum of one wall thickness greater and of the same alloy. Pipe must be 48 inches below the flow line of drainage ditches and all other highway drainage facilities, and must be properly protected from corrosion.

Facilities such as water and sanitary sewer lines, crossing the highway right-of-way may be approved without encasement, if cast or ductile iron, HDPE or material of equal design is used, with the understanding that maintenance will be performed by a method that will not disturb the through lanes or interfere with traffic. If a replacement facility becomes necessary, replacement will be made by boring or punching under the roadway or by inserting replacement pipe through the existing pipe, or any other approved method that will prevent disturbance of the highway. AC, PVC, or equivalent material lines will not be permitted without the use of a steel, or equivalent material, conduit. In any case, all conduit shall be sufficient to withstand roadway loadings.



All underground crossings must be installed by dry boring or punching or other approved methods. The method and equipment for the installation must be approved by the Division Engineer. When boring beneath a roadway, water may be used provided the elevation is a minimum of 6 feet below the top of the pavement. Sufficient water for lubricating the bit is acceptable; however, jetting or pressure flushing of the bore will not be permitted. The alignment of the bore is to be established by drilling a pilot hole before beginning the full size bore. When water is used, the annular space outside the conduit or carrier pipe is to have grout placed at a minimum of 10 PSI pressure, to insure against cavities beneath the roadbed. No digging or equipment will be permitted in center medians or ditch lines without special permission from the Division Engineer.

When steel pipe/conduit is placed construction should be done by either jacking, dry boring, or tunneling. When boring in cohesionless materials, jacking, dry boring, or tunneling shall be done in conjunction with the advancement of a steel conduit/pipe. When boring in Bentonite Clay or equivalent material, drilling mud shall be required at the ends of the bore for a minimum distance of 1-foot. A natural clay or concrete plug will be acceptable for other bores.

Time to complete a bore shall be kept within the limits of open boring or advancing a conduit that can be properly reamed and cleaned out within one working day. Under no circumstance shall muck or water be left standing inside the bore at the end of a working day, or due to a break-down of equipment of more than eight hours.

If considered necessary, pressure grouting of the voids will be required when the diameter of any bore exceeds the outside diameter of the pipe by 2 inches or more. In the interest of safety, trenching and the parking of equipment should be performed as far as possible from traffic lanes. In unusual cases where trenching is necessary, a special plan with specifications will be developed by the applicant, with assistance from the Division Engineer, setting out the method for controlling the traffic, placement of the facility and proper restoration of the roadway. These specifications must be approved by the Division Engineer.

11. Parallel facilities must be installed in the assigned corridor as approved by the Division Engineer. The utility owner will be responsible for any damage resulting from deviation of the assigned corridor. All buried facilities should be placed at a minimum depth of 30 inches, except for power, which should be placed at a minimum of 48 inches below the surface. All nonferrous lines must have an electrically conductive wire, with test points, or other means of locating the pipe while it is underground. The ditch must be backfilled to a density equal to the adjacent soil, and a proper vegetative cover established on the area disturbed. All parallel underground electric cables must be placed a minimum of 48 inches below the surface and marked at each point of change in direction.
12. The applicant must agree to refrain from disturbing trees, shrubbery, or any part of the landscape without approval of the Division Engineer. If it becomes necessary to disturb trees or shrubbery, the applicant's intentions must be plainly stated in the application which will include size and kind of trees and shrubs, and disposition during installation.
13. The Applicant agrees to comply with all applicable laws and regulations necessary to meet the Oklahoma Department of Environmental Quality (ODEQ) requirements for pollution prevention including discharges from storm water runoff on this project. Further, the Applicant agrees as stipulated in the ODEQ's General Permit to secure a storm water permit with the ODEQ, when required. It is agreed that the project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the storm water pollution prevention plan and the appropriate location map contained in the plans constitute the storm water management plan for the project previously described in the document. The Applicant agrees to have daily operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions. The Applicant agrees to file the Notice of Intent (NOI), when required, for a general construction Oklahoma Pollutant Discharge Elimination System (OPDES) permit with ODEQ which authorizes discharges of storm water associated with construction activity from the project site identified in this document.
14. The applicant must agree to hold the Department of Transportation harmless for any and all damage that the utility facilities might sustain while occupying a Federal or State highway right-of-way.
15. Blasting will not be permitted within the highway right-of-way except in unusual cases and only with special approval from the Division Engineer.
16. The applicant agrees to notify all owners who have facilities in the area encompassed by this permit. OKIE ONECALL [ (800) 522-6543 ] and the County Clerk will be notified 3 working days prior to the beginning of any work.

**This permit may be revoked for noncompliance or failure to begin work within a one year period of date of approval.**



## PIPELINES

Size \_\_\_\_\_  
Alloy/Material \_\_\_\_\_  
Wall Thickness \_\_\_\_\_  
Contents \_\_\_\_\_  
Mfg. Test Pressure \_\_\_\_\_  
Working Pressure \_\_\_\_\_  
Max. Operating Pressure \_\_\_\_\_

## ELECTRIC

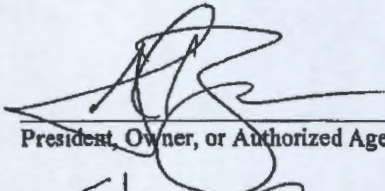
Voltage \_\_\_\_\_  
Conductor Size \_\_\_\_\_  
Type of Structure \_\_\_\_\_  
Ruling Span \_\_\_\_\_

## COMMUNICATIONS

Wires/Pairs/Strands 72 strand  
Gauge 0.49"  
Cable Type SINGLE jacket OSP  
ON 6M strand

President, Owner, or Authorized Agent - Signature

Date

  
Shane Burgess

Print Name

918-418-9797

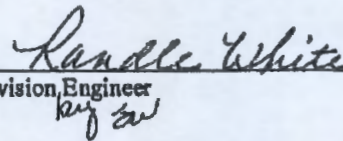
Local Contact Name and Phone Number

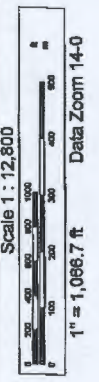
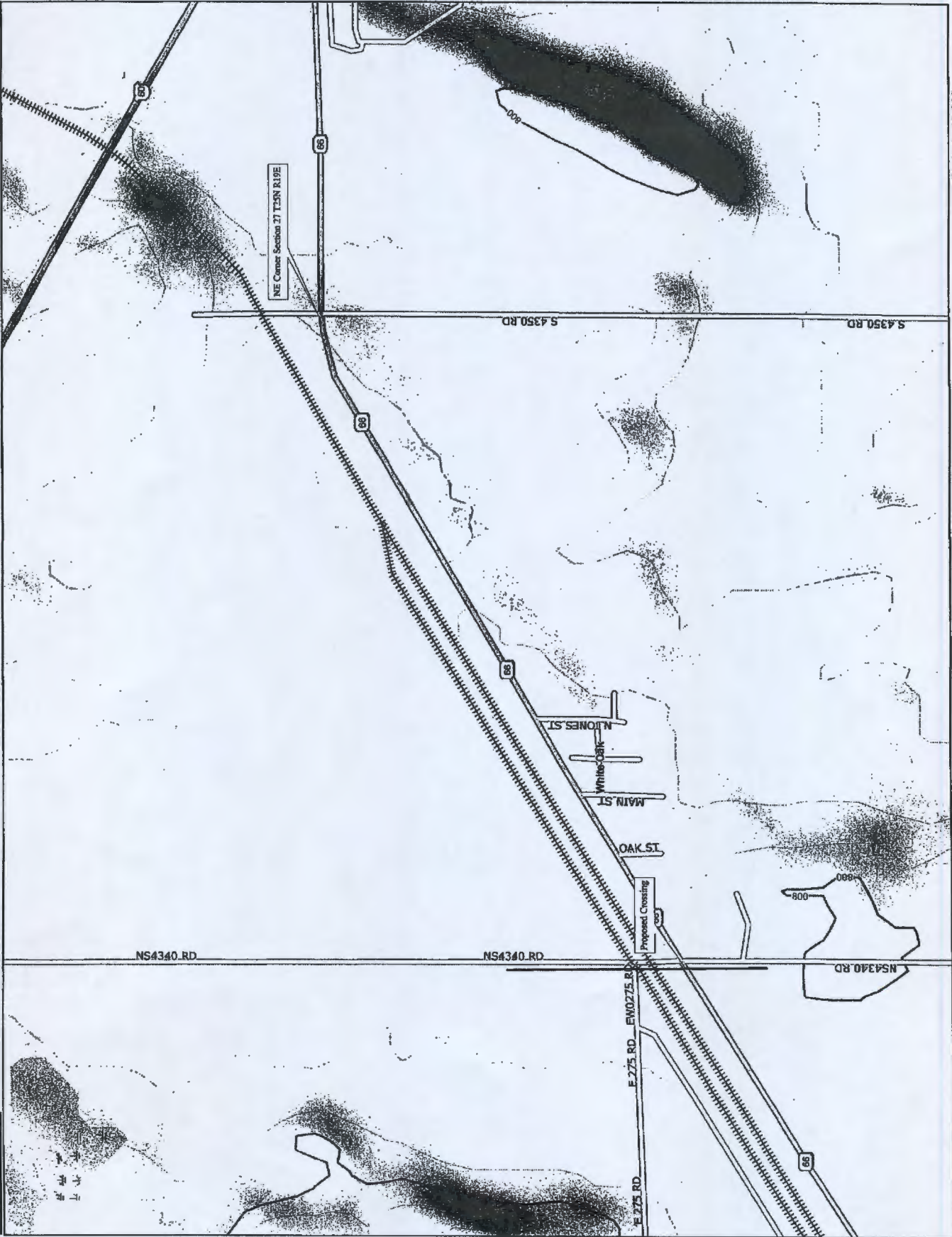
sburgess@rectec.net

Local Contact Email

Division Engineer

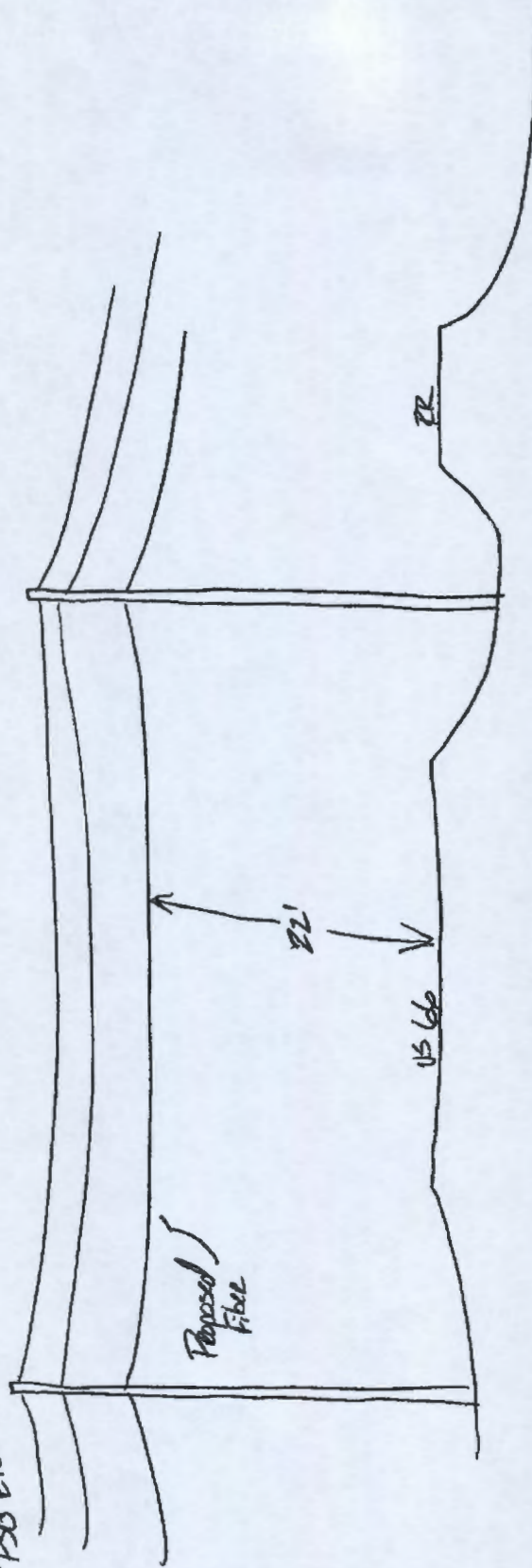
Date

  
Randle White  
5-13-14





Ex. P30 Elastic





Is now



NORTHEAST RURAL SERVICES d/b/a BOLT™ Fiber Optic Services  
Facilities Order and Service Agreement

**CONTRACTING COMPANY INFORMATION:**

Company Name: White Oak Indep School Dist 1  
Company Address: 27355 S. 4340 Rd.  
Vinita, OK 74301  
Contact Person: Rich McSpadden  
Phone Number: (918)256-4484  
E-mail address: rmcspadden@whiteoakschool.net

**FACILITY OWNER INFORMATION:**

Company Name: Northeast Rural Services d/b/a BOLT™ Fiber Optic Services  
Company Address: PO BOX 399  
Vinita, OK 74301  
Contact Person: Sheila Allgood  
Telephone Number: 918-787-9316  
Fax Number: 918-256-9457

**DESIRED SITE / FACILITIES ARRANGEMENT:**

Circuit A LOC: CORE Data Center  
Vinita. OK 74301  
Circuit Z LOC: 27355 S. 4340 Rd.  
Vinita, OK 74301

**CONTRACT SERVICE:**

Desired Type of Service: Internet Access 10 Mbps Dedicated Fiber Circuit  
Desired In-Service Date: July 1, 2018

**BOLT CHARGES:**

Non-Recurring Charges: \$ 0.00  
Monthly Recurring Charges: \$ 650.00  
Service Term: 1 Year Contract, renewable annually for a 3 year term.

**FACILITY ORDER SPECIFICS:**

- Services include 10 Mbps dedicated internet circuit. 10 Mbps Fiber transport from White Oak ISD 1 to the ISP.

**EXHIBIT  
"H"**



NORTHEAST RURAL SERVICES Herein after known as BOLT

Facilities Order and Service Agreement

The undersigned person or entity (hereinafter the "customer") agrees to the following Terms and Conditions of this agreement (hereinafter the "contract"). Northeast Rural Services, d/b/a BOLT™ Fiber Optic Services (hereinafter "BOLT") agrees to provide to the customer access to BOLT fiber service subject to the terms and conditions contained in this Contract.

**1. VALIDATION OF CREDIT**

BOLT reserves the right to determine the financial position and creditworthiness of Customer through available verification procedures or sources and Customer hereby consents to BOLT obtaining credit information regarding the Customer, its owners, or affiliates. If Customer's financial statements are not public information or have not otherwise been made available to BOLT, then, upon BOLT's request, Customer shall provide its most current audited and unaudited financial statements. If at any time Customer presents, in BOLT's reasonable discretion, an undue risk of non-payment, or if Customer fails to comply with the payment terms of this Contract or any Contract for Services with BOLT, BOLT may require a deposit or other form of security for payment.

**2. BOLT's RIGHT TO ASSURANCE**

If Customer has not provided BOLT with (i) its financial statements within ten (10) calendar days of BOLT's request, or (ii) in the event of BOLT's demand for assurance of payment, assurance satisfactory to BOLT within ten (10) calendar days of BOLT's notice for demand of such assurance, then, in addition to any other remedies available to BOLT, BOLT shall have the option, in its sole discretion, to exercise one or more of the following remedies: (x) cause the start of any services being provided to Customer under the terms of this Contract after giving Customer five (5) calendar days prior written notice. If Customer provides satisfactory assurance during the five (5) calendar day notice period, BOLT will not suspend services under this Contract.

**3. PAYMENT**

a) Nonrecurring charges, including construction costs, are due in advance. Recurring charges shall be due with ten (10) days of the date of the invoice; billing shall commence upon installation. Any amount not received within ten (10) days of the date of the invoice will be subject to BOLT's standard late charge of 1½% per month. Customer agrees to pay any sales, use, gross receipts, excise, access, bypass or other local, state and Federal taxes or charges, imposed on or based upon the provision, sale or use of the Services provided. Taxes will be separately stated on Customer's invoice.

**4. REMEDIES AVAILABLE FOR NON-PAYMENT**

a) Suspension of Service: In the event that payment in full is not received from Customer on or before the Due Date, BOLT shall have the right to provide a written notice of Suspension of Services to Customer (the "Suspension Notice"). If Customer fails to pay the full amount due as specified in the Suspension notice within five (5) calendar days of the postmark of the Suspension Notice, BOLT shall have the sole discretion to suspend or block all or any portion of the Services being provided to Customer and immediately place any pending requests for services or maintenance from Customer on hold, and to decline to accept any new requests for services commencing on the fifth (5th) calendar day after BOLT issues the Suspension Notice to Customer. Partial payment shall not affect BOLT's right to suspend services to Customer. If BOLT receives the entire past due amount within the five (5) calendar day notice period, the Customer's Service shall not be suspended. BOLT may continue such suspension until such time as Customer has paid in full all charges then due, including but not limited to reinstallation charges and/or late fees as specified herein. Following receipt of such payment, BOLT shall reinstate Customer's services subject to BOLT's Right to Assurance as provided above in Section 2. Suspension of Services as set forth in this section shall not affect or alter Customer's obligations to pay for the Service.

b) Customer's Default: If Customer: (i) fails to pay the full amount owed as specified in the Suspension Notice and such failure continues for five (5) days after postmark of the Suspension Notice to the customer, or (ii) fails to comply with any other material provision of this Contract and such noncompliance continues for ten (10) days after BOLT provides written notice to Customer of Customer's non-compliance, then BOLT, in its sole discretion, may elect to pursue one or more of the following remedies: (x) terminate this Contract and demand immediate and accelerated payment of all past due charges and future monthly charges and fees as contemplated under the terms and conditions of this Contract, or (y) take all reasonable and necessary actions to enforce payment, including suspension of all or any part of the Service, and/or (z) pursue any other remedies as may be provided at law or in equity.

**5. LAWFUL USE**

Customer may use the Services rendered under this contract for any lawful purpose for which they intended, provided that Customer will not use the Services so as to interfere with or impair service over any of the facilities and associated equipment comprising the BOLT fiber optic cable network or to impair the privacy of any communications over the fiber optic facilities and associated equipment of BOLT. In accordance with the terms of this Contract, Customer hereby agrees that it will neither undertake nor cause or permit to be undertaken any activity that to its knowledge is illegal under the laws of the State of Oklahoma or of the United States of America.

**6. SERVICE DATE: TERM**

Delivery of Services: BOLT shall use all reasonable efforts to make Services available to Customer by the estimated service date. BOLT shall not be liable for any damages resulting from delays in meeting any Service dates due to delays resulting from NORMAL CONSTRUCTION PROCEDURES. Such delays shall include, but not be limited to delays in obtaining necessary regulatory approvals for construction, delays in obtaining right of way approvals, and delays in actual construction work. If Customer is not ready to accept BOLT's Services within 30 days after the specified service date, then



BOLT shall commence billing beginning with the specified service date or the date of the turn-up of the service. Delays Caused by Third Parties: BOLT shall not be liable for any delays resulting from the non-performance or inability of a third-party to deliver services necessary to BOLT's performance under the terms of this Contract. BOLT shall not be liable for any Customer losses incurred as a result of any delays resulting from the non-performance or inability of a third-party to deliver services necessary to BOLT's performance under the terms of this Contract.

**7. CUSTOMER RESPONSIBILITIES**

Access – Customer is responsible for arranging access to any of the rights of way, conduit and equipment space necessary to provide Service on the premises so that BOLT - authorized personnel, employees, or agents may install, repair, maintain, inspect, replace or remove any and all facilities and associated equipment provided by BOLT. Access to such sites shall be made available at a time mutually agreeable to Customer and BOLT. BOLT shall also have the right to obtain access to its cable installed in Customer-provided conduit at any splice or junction box. Provision of Customer Premises, Equipment Space, Conduit, and Electrical Power – Customer shall provide all necessary premises, equipment, storage space, conduit, and electrical power required to maintain the facilities to which BOLT is delivering services under this Contract without charge or cost to BOLT. The space, conduit, and power must be made available to BOLT on a timely basis. Customer shall be responsible for assuring that the equipment space and associated facilities, conduit and rights of way which it is providing are a safe place to work and are protected against fire, theft, vandalism or other casualty, and that the use thereof complies with all applicable laws, rules and regulations and with all applicable leases or other contractual agreements. Governmental Authorizations – Customer shall be solely responsible for obtaining and continuing in effect all regulatory and governmental authorizations necessary to permit Customer to receive and comply with its obligations under this Contract.

**8. EQUIPMENT**

Title – Customer agrees that all right, title and interest in all of the fiber optic or other facilities and associated equipment provided by BOLT hereunder shall at all times remain exclusively the property of BOLT. Customer shall not create or permit to be created any liens or encumbrances relating to Customer's use of the Service or arising from the location of the equipment. Upon termination of Service, BOLT shall remove its equipment and shall have the right, but not the obligation, to remove all other facilities from any applicable premises. Maintenance – BOLT shall use reasonable efforts to maintain the Services in accordance with applicable performance standards therefore. There are no additional charges for BOLT maintenance services. However, BOLT shall have no responsibility for the maintenance and repair of facilities and equipment that it does not furnish. BOLT may assess Customer its standard service charge for false call outs.

**9. LIMITATIONS OF LIABILITY**

Liability for Service Interruptions – Credit Allowances: To the extent that any part or portion of the Service is unavailable, interrupted, degraded or otherwise unsatisfactory for any reason, BOLT and Customer herein agree that Customer's sole and exclusive remedy shall be credit allowances commensurate to the duration of the service interruption. In order to be eligible for a credit allowance, Customer must immediately notify BOLT of the service interruption and furnish information regarding the time, place, and duration of the interruption. Liability for Damages to Property – BOLT shall not be liable for any damages whatsoever to Property at any Customer premises resulting from the installation, maintenance, repair or removal of equipment and associated wiring. Liability for Services and Equipment Not Provided by BOLT – BOLT shall not be liable for any damages whatsoever associated with Service, channels, or equipment which it does not furnish or for any act or omission of any entity furnishing to Customer facilities or equipment used for or with the Service provided pursuant to this Contract. Liability for Force Majeure Events - BOLT shall not be liable for any failure of performance or Service for reasons beyond its reasonable control including but not limited to casualty, act of God, wind, flood, tornado, storm, fire, explosion, vandalism, cable cut, governmental order, riot, insurrection, strike, lockout, condemnation or loss of right-of-way. Liability for Negligence or Fault of Customer – BOLT shall not be liable for any interruptions or damages due to the fault of negligence of customer or due to the failure or malfunction of Customer-provided equipment or facilities. Liability Regarding Governmental Authorization – BOLT shall use its best efforts to obtain and keep in effect all governmental authorizations necessary, in order to provide Service under this Contract. BOLT shall be entitled to take, and shall have no liability for, any action necessary including termination, to bring the Service into conformance with any governmental regulations or authorizations, and Customer shall fully cooperate in and take such action as may reasonably be requested by BOLT as part of such compliance. No Special Damages – Customer hereby agrees to hold BOLT harmless from any liability for any claims asserting special, consequential, exemplary, or punitive damages as a result of its performance or nonperformance of this Contract.

**10. TERMINATION**

BOLT may terminate this Contract without liability and Customers payment obligation will be apportioned if: The facilities used to provide Service are taken by exercise of condemnation or eminent domain; or The facilities shall, in BOLT's judgment, be made inoperable and beyond economically or technologically feasible repair. Customer may terminate this Contract in whole or in part only by canceling all or any portion of the facilities described herein by providing BOLT thirty (30) days advance written notice of cancellation. In such case, Customer shall pay to BOLT all charges for Facilities provided (without the right of set-off against non-refundable charges) through the effective date of such cancellation.

**11. INDEMNIFICATION**

BOLT shall be indemnified, defended and held harmless by Customer against all claims, suits, proceedings, expenses, losses, liabilities, or damages (collectively "Claims") arising from the use of Service pursuant to this Contract involving:

- a) Claims of third parties, including patrons or customers of Customer, arising out of, resulting from, or related to the customer's resale or attempted resale of the Service;
- b) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from any Communication using the Service;
- c) All other claims arising out of any act or omission of Customer, or customers or patrons of Customer, in connection with the Services made



available to Customer under the terms of this contract. Customer agrees to defend BOLT against any such claim and to pay, without limitation, all litigation costs, reasonable attorney fees and court costs, settlement payments, and any damages awarded or resulting from any such claim.

12. ASSIGNMENT

Notwithstanding any terms to the contrary contained herein and to the extent permitted by law, the parties hereto agree that BOLT may assign this Agreement and all the rights contained herein to the Rural Utility Services (RUS) in accordance with the terms of that certain loan and security agreement with RUS dated August 22, 2013 (Loan Agreement), entered into for the purposes of financing the construction and operation of BOLT's fiber optic network.

13. WARRANTIES

THERE ARE NO AGREEMENTS, WARRANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

14. ENTIRE AGREEMENT

This Contract, including all exhibits, appendices, and attachments, constitutes the entire agreement between BOLT and Customer. This Contract may be modified, waived or amended only by a written instrument signed by the party against which enforcement thereof is sought and shall be binding upon the parties' respective successors and assigns. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the party to be charged.

15. VENUE AND CHOICE OF LAW

The rights and obligations of the parties under this Contract shall be governed by and construed and enforced in accordance with the laws of the State of Oklahoma. The parties hereby agree that venue regarding any litigation under the terms of this Agreement shall be exclusively in the District Court of Craig County, State of Oklahoma

16. ATTORNEYS FEES AND COSTS

In any action brought under this Agreement, the prevailing party shall be entitled to recover its costs and attorneys' fees and all other litigation costs, including expert witness fees, and all attorneys' fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding.

17. REGULATORY JURISDICTION

In the event that provisions set forth in this Agreement are determined to be in violation of any rule, order, decision, or tariff of any state or federal agency having regulatory jurisdiction over BOLT, the terms of this Agreement shall be deemed to be modified to the extent permissible under such rule, order, decision or tariff.

BOLT™ Fiber Optic Services

By: 

Name: Sheila Allgood

Title: BOLT Manager

Date: 2-22-18

White Oak Indep School Dist 1

By: 

Name: Richard R. McGee

Title: Superintendent

Date: 2-22-18